

Statutory References

N.J.S.A. 54:39-11.

18:18-2.5 Revocation and cancellation of license

(a) The license held by any distributor, importer, gasoline jobber, retail dealer, wholesale dealer, seller of special fuels, user of special fuels, transporter, exporter, or storage facility operator may be suspended or revoked by the Director for a violation of any of the provisions of these rules, or on other reasonable grounds, after five days' notice of and hearing on such proposed revocation or suspension conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Upon receipt of a written request from the holder of any license, the Director has the power to cancel such license effective as soon thereafter as it has been determined that all tax, fines, penalties and interest properly owing to the State have been paid.

(c) If the Director finds that any person to whom a license has been issued is no longer engaged in the business for which the license was issued, the Director has the power to cancel such license by giving such person reasonable notice of such intent to cancel by mail to his last known address.

(d) Whenever a license is cancelled, the license certificate issued must be surrendered to the Director.

Amended by R.1995 d.79, effective February 6, 1995.
See: 26 N.J.R. 4512(a), 27 N.J.R. 535(a).

Statutory References

N.J.S.A. 54:39-12.

18:18-2.6 Hearings

(a) The Director may personally or by delegate conduct informal or formal hearings, administer oaths and examine any person engaged in the business of dealing in fuels as a distributor, importer, gasoline jobber, wholesale dealer, retail dealer, storage facility operator, seller of special fuels, user of special fuels, transporter, exporter or otherwise, and the directors, officers, agents and employees of such person and all other witnesses, relative to the motor fuel business of such person, in respect to any matter incident to the administration of the Act.

(b) Where required by law, hearings shall be held pursuant to the terms of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Amended by R.1995 d.79, effective February 6, 1995.
See: 26 N.J.R. 4512(a), 27 N.J.R. 535(a).

Statutory References

N.J.S.A. 54:39-13.

18:18-2.7 Subpoenas for witnesses; records

The Director may by subpoena compel the attendance of witnesses and the production of any books, records, papers, accounts of any person who sells, uses or distributes motor fuels, either directly or indirectly, or of any person, at a hearing.

Amended by R.1995 d.79, effective February 6, 1995.
See: 26 N.J.R. 4512(a), 27 N.J.R. 535(a).

Statutory References

N.J.S.A. 54:39-14.

18:18-2.8 Disobedience of subpoena

If any person subpoenaed to attend any hearing fails to appear, to be examined or to answer any question, or to produce any books or papers when ordered to do so by the Director or his assistants designated by him to conduct such hearing, the Director or such assistant or other official properly designated by law to do so may apply to the Superior Court for an order to compel him to do so.

Amended by R.1995 d.79, effective February 6, 1995.
See: 26 N.J.R. 4512(a), 27 N.J.R. 535(a).

Statutory References

N.J.S.A. 54:39-15.

18:18-2.9 (Reserved)

Repealed by R.1995 d.79, effective February 6, 1995.
See: 26 N.J.R. 4512(a), 27 N.J.R. 535(a).
Section was "Hearings by assistants; effect".

18:18-2.10 Nature of hearings

(a) An informal hearing before the Division of Taxation is in the nature of a conference, with or without representation on behalf of a taxpayer or other party in interest.

(b) At a formal hearing:

1. All evidence is taken before a court recorder and the parties are not bound by common law or statutory rules of evidence;

2. All testimony having reasonable probative value is admitted, but immaterial, irrelevant or unduly cumulative testimony may be excluded;

3. Every party has the right to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full, true disclosure of the facts;

4. After all parties have been given the opportunity of presenting all the evidence in support of the issues, the Division of Taxation shall take the matter under advisement and reach a determination on the record and facts disclosed;

Deleted 1.-3. under definition of "distributor".
Amended by R.1995 d.79, effective February 6, 1995.
See: 26 N.J.R. 4512(a), 27 N.J.R. 535(a).

Statutory References

N.J.S.A. 54:39-9.
N.J.S.A. 54:39-2.
N.J.S.A. 54:39-3.
N.J.S.A. 54:39-28.
N.J.S.A. 54:39-2.
N.J.S.A. 54:39-6.1.
N.J.S.A. 54:39-6.1, 11, 12, 31.1.
N.J.S.A. 54:39-4.
N.J.S.A. 54:39-7.
N.J.S.A. 54:39-5.
N.J.S.A. 54:39-7.
N.J.S.A. 54:39-2.
N.J.S.A. 54:39-8.
N.J.S.A. 54:39-6.

Case Notes

Fifty percent rule regarding importing of motor fuels was unconditional. *New York Fuel Terminal Corp. v. N.J. Dept. of Treasury, Div. of Taxation*, 10 N.J.Tax 26 (1988).

SUBCHAPTER 2. LICENSING

18:18-2.1 General powers

(a) The Director is authorized and empowered to carry into effect and execute the provisions of the Act, and may make and enforce such rules and regulations as may be deemed necessary for the administration and enforcement of the same.

(b) The Director is authorized to conduct joint audits, subject to specific agreements with any agency of the United States of America, with another state, or through national or regional tax associations, of the obligations of any distributor, importer, gasoline jobber, retail dealer, wholesale dealer, seller of special fuels, user of special fuels, exporter, carrier or storage facility operator arising out of the Motor Fuels Tax Act. Notwithstanding the provisions of R.S. 54:50-8 (dealing with the confidentiality of tax records) to the contrary, such agreements may provide for the exchange of the records and files of the Director respecting the administration of the Motor Fuels Tax Act or of any other state tax law.

(c) The Director is authorized to arrange for the institution of programs of cooperation with other departments, divisions, and agencies of the State of New Jersey, such as but not limited to Weights and Measures, the Energy Office,

Division of Motor Vehicles and the Board of Regulatory Commissioners, where a program may be necessary to ensure effective and efficient administration and enforcement of the Motor Fuels Tax Act.

(d) The Director or his or her designated assistant, and such members of his staff as may be necessary and convenient, shall meet at the offices of the Director in Trenton not less than once annually with a council of advisors composed of not more than 10 persons representing various segments of the petroleum industry in New Jersey. The industry delegates to the council meeting shall be chosen by agreement of the representatives of the industry itself. The purpose of the meeting shall be to review and monitor the processes of collection and enforcement of all excise taxes dealing with motor fuels or petroleum products in this State.

Amended by R.1995 d.79, effective February 6, 1995.
See: 26 N.J.R. 4512(a), 27 N.J.R. 535(a).

Statutory References

N.J.S.A. 54:39-10.

18:18-2.2 Bonds and penalties

The Director shall determine the amount of every bond required to be filed with him, to secure the payment of taxes, penalties and interest imposed by and payable under the provisions of the Act, in accordance with provisions thereof relating to the filing of bonds and the amounts of the same.

Statutory References

N.J.S.A. 54:39-10.

18:18-2.3 Issuance of licenses

The Director, upon application, issues all licenses required to be obtained pursuant to these regulations, and may refuse to issue or renew the license of any person upon sufficient cause being shown.

Statutory References

N.J.S.A. 54:39-11.

18:18-2.4 Request for hearing upon refusal to grant license

(a) Any person who makes application for a license or the renewal thereof may:

1. Within 10 days after refusal by the Director make a written request for a hearing; and

2. Shall then appear for a hearing conducted pursuant to the terms of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Amended by R.1995 d.79, effective February 6, 1995.
See: 26 N.J.R. 4512(a), 27 N.J.R. 535(a).

a special fuels seller/user license in addition to a gasoline jobber's license.

12. Upon the revocation, cancellation or expiration of a Gasoline Jobber's License, all the untaxed gasoline remaining in inventory at the time of such revocation, cancellation or expiration, shall be reported on the final return and the tax due thereon paid;

13. Revocation of license.

i. The Division of Taxation may, at any time, make inquiry with respect to the continued eligibility of a gasoline jobber and may require any gasoline jobber to furnish information and documents as may be necessary to establish his eligibility;

ii. In the event there is evidence that a gasoline jobber has failed to meet the requirements for the holding of a Gasoline Jobber's License, a hearing shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

iii. If it is found upon sufficient evidence that the gasoline jobber has failed to comply with the necessary requirements for a license, the Division of Taxation may revoke the Gasoline Jobber's License or impose such other penalties as may be prescribed by law;

iv. Persons whose Gasoline Jobber's License has been cancelled for failure to meet the qualifications of the license or for other reasons shall not be eligible for reinstatement until six months has elapsed.

"Importer" means:

1. A person wherever resident or located who brings gasoline into this State, from a point outside this State, for use, distribution, storage or sale in this State; or

2. Who hires a carrier to transport the product and who has full ownership, possession, control, title, custody, and direction of the product while in transit into this State.

"Motor Vehicle" means any vehicle designed to transport passengers or property over the public highways and which must be registered with the Motor Vehicle authorities of any state before it may lawfully be used upon the highways. (Historical Note: Formerly Reg. M.F.-6 filed 4/30/57.)

"Persons" means and includes natural persons and partnerships, firms, associations, joint stock companies, syndicates and corporations, and any receiver, trustee, conservator or other officer appointed pursuant to law or by any court, state or Federal; also counties, municipalities and other political subdivisions of this State, singular or plural and the State of New Jersey. The use of the singular number shall include the plural number.

"Purchase" means and includes, in addition to its ordinary meaning, any acquisition of ownership or possession.

"Retail dealer" means any person who engages in the business of selling fuels from a fixed location such as a service station, filling station, store or garage, directly into the service tank or tanks of any vehicle propelled by said fuel.

"Sale" means, in addition to its ordinary meaning, any exchange, gift, theft or other disposition. In every case where fuels are exchanged, given, stolen or otherwise disposed of, they shall be deemed to have been sold.

"Seller of special fuels" means any person who sells any fuel capable of generating power in a diesel type engine which will include, without limitation, diesel fuel, No. 2 fuel oil, and kerosene.

"Special fuels" means any fuel capable of generating power in a diesel type engine which will include, without limitation, diesel fuel, No. 2 fuel oil and kerosene.

"Storage facility operator" means a person owning, renting or leasing a bulk storage facility in this State with a capacity of 100,000 gallons or more and any person leasing or subleasing space in such facility and storing fuels therein. A particular facility may have multiple tanks which together make up the 100,000 gallon capacity.

"Use" means and includes, in addition to its ordinary meaning, the transfer of fuel by a distributor, seller/user, importer, or gasoline jobber into a motor vehicle or into a receptacle from which fuel is supplied by him to his own or other motor vehicles.

"User of special fuels" means any person, except the State of New Jersey and any political subdivision thereof, who maintains a storage tank or tanks of any type, including a conveyance, equipped with a dispensing device, and being used for storage and dispensing any fuel capable of generating power in a diesel type engine for his own use. "Storage tanks" as used in this definition shall not apply to a vehicle service tank used to carry motor fuels for use exclusively in propelling the vehicle carrying the tank.

"Wholesale dealer" means any person not qualified as a gasoline jobber or distributor who engages in the business of the sale and/or purchase of tax-included gasoline to other persons who resell the gasoline or who place or have the gasoline placed into their containers or storage tanks for future consumption. The words "containers" or "storage tanks" as used herein shall not apply to vehicle service tanks used only to carry motor fuels for use in propelling only the vehicle carrying such tanks.

Amended by R.1970 d.21, effective March 4, 1970.

See: 2 N.J.R. 19(c), 2 N.J.R. 36(c).

Amended by R.1971 d.3, effective January 4, 1971.

See: 2 N.J.R. 102(f), 3 N.J.R. 30(d).

Amended by R.1979 d.137, effective April 4, 1979.

See: 11 N.J.R. 149(d), 11 N.J.R. 264(b).

Amended by R.1989 d.198, effective April 17, 1989.

See: 21 N.J.R. 125(b), 21 N.J.R. 1020(a).

"Distributor" means and includes every person, wherever resident or located, who produces, refines, manufactures, blends or compounds fuels and sells, uses, stores or distributes the same within this State.

"Export" means the sending or carrying by any person of fuels out of New Jersey to another state or foreign country in the way of commerce. (Historical Note: Formerly Reg. M.F.-2 filed 4/30/57.)

"Fuels" means:

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

2. Any 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;

3. It includes:

i. All grades of motor gasoline, natural gasoline, marine gasoline, aviation gasoline, motor fuel blending naphthas, motor grade benzol and motor grade toluol; and

ii. Any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the latest revised standard method of test for distillation of gasoline, naphthas, kerosene, and similar petroleum products (American Society for Testing Materials Method D-86) shows not less than 10 percent distilled (recovered) below 347° Fahrenheit and not less than 95 percent distilled (recovered) below 464° Fahrenheit; and

iii. All combustible gases which exist in a gaseous state at 60° Fahrenheit and at 14.7 pounds per square inch absolute pressure, industrial naphthas and solvents, aromatic distillages, diesel fuel, additives, and all other products not included within the foregoing provisions of this section, including any other liquids that are used or sold for use as a quantity extender to motor gasoline.

4. Provided, however, that any person dealing therein, shall at any time, and from time to time, upon written request of the Director, report his receipts, sales, use and distribution of said combustible gases and other products in a manner prescribed by the Director.

"Gasoline" means any liquid or gaseous substance commonly or commercially known or sold as gasoline regardless of its classification or use.

"Gasoline jobber" means a person who engages in the purchase and sale of gasoline for resale and who regularly makes 95 percent or more of his gasoline sales to not less

than 25 retail dealers, fleet operators or other large consumers, including farm accounts.

1. (Reserved)

2. A gasoline jobber must qualify in every respect with all the terms and conditions prescribed for a gasoline jobber under these rulings. There is no requirement that a gasoline jobber possess a wholesale dealer's license in order to qualify for a gasoline jobber's license;

3. 95 percent of total wholesale sales as specified means 95 percent or more of the total gasoline sales expressed in gallons made in this State by a gasoline jobber. Such sales must consist of gasoline sales made at wholesale only; retail sales may not be included;

4. In determining the 95 percent of sales requirement herein, sales made by a jobber in which title to gasoline is transferred back to the original supplier of such gasoline, shall not be included in the total number of gasoline sales made by a jobber;

5. In order to qualify for a gasoline jobber's status, a person must, at all times, have a minimum of 25 regular customers, in this State, all of whom are either retail dealers, fleet operators, large consumers or farm accounts;

6. Retail dealer (as a jobber customer) means any person who engages in the business of selling fuels as defined in the Motor Fuels Tax Law, N.J.S.A. 54:39-1 et seq. from a fixed location such as a service station, filling station, store or garage, directly into the service tank or tanks of any vehicle propelled by said fuel;

7. Fleet operator (as a jobber customer) means any person who operates for use in a business, at all times, five or more vehicles propelled by gasoline;

8. The primary factors which will be considered in the determination of a large consumer as a jobber customer shall be the number of gallons of gasoline (2,000 gallons or more per year) purchased by such a consumer and the storage tank facilities (a tank capacity of 300 or more gallons) used by such a consumer;

9. A regular customer (as a jobber customer) is any retail dealer, fleet operator, large consumer, or farm account who purchases a substantial amount of fuel at frequent intervals throughout the year;

10. (Reserved)

11. Gasoline jobber.

i. A gasoline jobber may engage in the selling of gasoline at wholesale without obtaining a Wholesale Dealer's License, during the period in which he has obtained a Gasoline Jobber's License;

ii. In order to engage in wholesale sales of motor fuels other than gasoline, a gasoline jobber must obtain