

CHAPTER 18A

PETROLEUM GROSS RECEIPTS TAX

Authority

N.J.S.A. 54:50-1.

Source and Effective Date

R.2002 d.211, effective June 10, 2002.
See: 33 N.J.R. 4203(a), 34 N.J.R. 2324(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 18A, Petroleum Gross Receipts Tax, expires on December 7, 2007. See: 39 N.J.R. 2476(b).

Chapter Historical Note

Chapter 18A, Petroleum Gross Receipts Tax, was adopted as R.1992 d.30, effective February 3, 1992. See: 23 N.J.R. 3715(a), 24 N.J.R. 473(a).

Pursuant to Executive Order No. 66(1978), Chapter 18A, Petroleum Gross Receipts Tax, was readopted as R.1997 d.74, effective January 23, 1997. See: 28 N.J.R. 5159(a), 29 N.J.R. 585(a).

Chapter 18A, Petroleum Gross Receipts Tax, was readopted as R.2002 d.211, effective June 10, 2002. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. SCOPE AND DEFINITIONS

18:18A-1.1 Purpose and scope

The rules contained in this chapter are for the purpose of describing and explaining the application and implementation of the Petroleum Products Gross Receipts Tax Act, N.J.S.A. 54:15B-1 et seq. (P.L. 1990, c.42) and as subsequently amended. The scope of the rules is derived from the statute and the chapter is proposed and adopted pursuant to it.

18:18A-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

The "Act" means the "Petroleum Products Gross Receipts Tax Act," P.L. 1990, c.42 (N.J.S.A. 54:15B-1 et seq.) and any amendments thereto.

"Blending" means combining, compounding, or mixing one or more petroleum products with additives or other substances resulting in a new or enhanced petroleum product.

"Book transfer" means:

1. An accounting procedure for simultaneously settling multiple petroleum delivery obligations in which the following occurs:

i. Three or more petroleum companies have sequential product supply obligations to each other for the same volume of product;

ii. Each customer of its supplier in the sequence agrees to release its supplier from its delivery obligation in consideration for that customer's supplier causing (directly or indirectly) its customer to be released from its delivery obligation to the next party in the sequence;

iii. The sequential releases continue down the chain until the first party in the delivery chain, which has been released from its delivery obligation, becomes the last

party in the chain by releasing the penultimate party from its delivery obligation;

iv. No physical volume of product is ever transferred; and

v. All parties book identical volumes from beginning to end.

2. In addition, and for purposes of this chapter only, a book transfer may also mean and include a sale from a qualified distributor or direct payment permit holder to another qualified distributor or direct payment permit holder.

"Co-generation facility" means a facility the primary purpose of which is the sequential production of electricity and steam or other forms of useful energy that are used for industrial or commercial heating or cooling purposes and which is designated by the Federal Energy Regulatory Commission, or its successor, as a "qualifying facility" pursuant to the provisions of the Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617.

"Commercial consumers" means those companies that produce, consume, blend or distribute substantial quantities of petroleum products in the state, companies making sales pursuant to a written contract extending one year or longer to nonprofit entities qualifying under N.J.S.A. 54:32b-9(b) as evidenced by an invoice prescribed by N.J.A.C. 18:18A-1.2, and companies making sales to governmental entities qualifying under N.J.S.A. 54:32B-9(a), or such other company as may be licensed by the Director.

"Company" means a corporation, partnership, limited partnership association, individual, or any fiduciary or other person or entity engaged in activities subject to the Petroleum Products Gross Receipts Tax Act.

"Direct payment permit holder" means a commercial consumer which has registered with the Director pursuant to these rules and engages in blending, manufacturing, in the sale of No. 2, No. 4 or No. 6 fuel oil or kerosene used for residential heating purposes or propane used for residential heating purposes, or consumes bunkered fuels in interstate or foreign commerce, is a common carrier consuming aviation fuel in interstate or foreign commerce, or such other company as may be licensed by the Director pursuant to N.J.S.A. 54:15B-12. Direct payment permit holders are authorized to file reports and remit applicable tax directly to the Director.

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

"Distributor" means and includes every company, wherever resident or located, which imports into this State petroleum products for use, distribution, storage or sale in this

State after the same shall reach this State; and also every company who produces, refines, manufactures, blends or compounds petroleum products and sells, uses, stores or distributes the same within this State, and which holds a distributors license under the New Jersey Motor Fuels Tax Act (see N.J.S.A. 54:39-3 and N.J.A.C. 18:18-1.1).

"Exchange agreement" means the loaning of a petroleum product by one company to another company to facilitate supply needs at a particular location. An exchange balance settlement is a common method used to balance out the product receivable at a specified time. An exchange balance settlement is an economic value established for the volumes involved and booked accordingly by each party to the exchange.

"Exempt organization" means an organization authorized as an exempt organization with the Division of Taxation for sales and use tax purposes.

"Exportation" or "export" means the conveyance of petroleum products from New Jersey to a location outside New Jersey for the purpose of sale or use outside the State.

"First sale of petroleum products within this State" means the initial sale of petroleum products delivered to a location in New Jersey and sold to a purchaser which is not a distributor or the holder of a direct payment permit. A "first sale of petroleum products within this State" does not include a book or exchange transfer of petroleum products if such products are intended to be sold in the ordinary course of business.

"Gross receipts" means all consideration derived from first sales of petroleum products within this State as herein defined. Gross receipt shall not include:

1. Consideration derived from sales of petroleum products within this State sold for exportation from this State;
2. Consideration derived from sales of No. 2 fuel oil to be used exclusively for residential heating or sales of propane gas used for residential heating. In addition, on and after July 1, 1991 petroleum products do not include No. 4 fuel oil, No. 6 fuel oil, and kerosene to be used exclusively for residential use. Residential heating includes all forms of heating including, for example, the heating of air, water, or food; or
3. The tax imposed under N.J.A.C. 18:18A-2.1 (see N.J.A.C. 18:18A-2.1 for an example);
4. Consideration derived from receipts from sales on and after July 1, 1990 of petroleum products used by marine vessels engaged in interstate or foreign commerce;

5. Consideration derived from sales on and after July 1, 1990 of aviation fuels used by common carriers in interstate or foreign commerce other than the "burnout" portion taxable pursuant to calculations at N.J.A.C. 18:18A-6.3;

6. Consideration derived from sales of asphaltic materials on and after July 1, 1991;

7. Consideration derived from sales of petroleum products sold to a nonprofit entity on and after July 1, 1991 which:

i. Has been issued an ST-5 exemption certificate by the Division of Taxation pursuant to the Sales and Use Tax Act;

ii. Has a written contract with its vendor extending one year or longer; and

iii. Has a written invoice to evidence the transaction;

8. Consideration derived from sales of petroleum products sold on and after July 1, 1991 to:

i. The State of New Jersey, or any of its agencies, instrumentalities, public authorities, public corporations or political subdivisions, and school boards; or

ii. The United Nations or any international organization of which the United States of America is a member;

9. Consideration derived from sales of polymer grade propylene used in the manufacture of polypropylene sold on and after July 1, 1991; or

10. Consideration derived from the first sale of petroleum products on and after July 1, 1990 to the United States Government, or to any of its departments, agencies, or instrumentalities for use in a Federal government function or operation.

11. That percent of receipts, as provided in 11i-iv below, from sales of petroleum products used by a utility, a co-generation facility or a wholesale generation facility to generate electricity that is sold for resale or to an end user other than the end user upon whose property is located the co-generation facility that generated the electricity or upon the property purchased or leased from the end user by the person owning the co-generation facility if such property is contiguous to the user's property and is the property upon which is located a co-generation facility that generated the electricity.

i. For the period January 1, 2001 to December 31, 2001, "gross receipts" from sales of petroleum products as described in this paragraph 11 made in those months shall not include 25 percent of those receipts;

ii. For the period January 1, 2002 to December 31, 2002, "gross receipts" from sales of petroleum products

as described in this paragraph 11 made in those months shall not include 50 percent of those receipts;

iii. For the period January 1, 2003 to December 31, 2003, "gross receipts" from sales of petroleum products as described in this paragraph 11 made in those months shall not include 75 percent of those receipts; and

iv. On and after January 1, 2004, "gross receipts" from sales of petroleum products as described in this paragraph 11 made after that date shall not include any of those receipts.

"Invoice" means a document related to a sale showing:

1. The name and address of the person from whom the petroleum products were purchased;

2. The name and address of the purchaser;

3. The date of purchase;

4. The type and quantity of the product purchased;

5. The price paid for the purchase of the product; and

6. An acknowledgment by the seller that payment of the cost of the product to the seller has been made. Such invoice shall be legibly written and shall be void if any correction or erasures shall appear on it.

"Petroleum products" means:

1. Refined products made from crude petroleum and its fractionation products through straight distillation of crude oil or through redistillation of unfinished derivatives but does not mean the products commonly known as No. 2 fuel oil and propane gas to be used exclusively for residential use. In addition, on and after July 1, 1991, petroleum products do not include No. 4 fuel oil, No. 6 fuel oil and kerosene to be used exclusively for residential use.

2. From July 1, 1990 through June 30, 1991, petroleum products are considered to include, for example, and without limitation: acid oil, alkylates, aromatic chemicals, asphalt and asphaltic materials (liquid and solid), benzene, butadene, butylene, coke (petroleum), ethylene, fractionation products of crude petroleum, gas (refinery or still oil), gases (liquefied petroleum), gasoline, greases (lubricating), hydro-carbon fluid, jet fuels, kerosene, mineral jelly, mineral oils (natural), mineral waxes (natural), naphtha, naphthenic acids, oils, partly refined sold for rerunning, oils and fuel (lubricating and illuminating), paraffin wax, petrolatums, propylene, road materials (bituminous), road oils, solvents, and tar of residuum.

3. On and after July 1, 1991 receipts from sales of certain of the foregoing list of petroleum products in this definition shall not result in taxable gross receipts (see definition of gross receipts).

4. Petroleum products do not include any finished manufactured products that may include petroleum as an ingredient but are not themselves petroleum products such as plastics, animal feed, anti-freeze, ink, roofing shingles, synthetic fibers.

"Residential building" means a single or multi-family dwelling, nursing home, trailer, condominium, boarding house, apartment house or other structure designed primarily for use as a dwelling including a hospital, barracks, dormitory, or prison but not including a hotel, motel or like establishment offering shelter on a transient basis of less than 90 days.

"Sale for exportation" means a sale of petroleum products to a purchaser who itself exports the product as defined in this section.

"Use" means the exercise of any rights or power over a petroleum product by a purchaser or importer thereof including, but not limited to, the receiving, storage or any keeping or retention for any length of time, withdrawal from storage, any installation or affixation to real or personal property, combustion or incorporation into a product for sale which product is not an identifiable petroleum product. The term "use" does not include blending, compounding, or packaging where the resulting product is also a petroleum product. The term "use" does not include storage or keeping of petroleum products held in inventory by a merchant that are exported from the State for sale or use outside the State.

"Wholesale generation facility" means a facility the primary purpose of which is the sequential production of electricity to be sold exclusively at wholesale as determined by the Federal Energy Regulatory Commission, or its successor, as an "exempt wholesale generator" pursuant to the provisions of section 32 of the 'Public Utility Holding Company Act of 1935,' 15 U.S.C. § 79z-5a.

Amended by R.2002 d.211, effective July 1, 2002.

See: 33 N.J.R. 4203(a), 34 N.J.R. 2324(a).

Added "Co-generation facility" and "Wholesale generation facility"; in "Gross-receipts", added 11.

SUBCHAPTER 2. TAX RATE; RECEIPTS AND IMPORTS

18:18A-2.1 Rate of tax

(a) For the period July 1, 1990 through June 30, 1991, the tax is imposed on receipts from sales of all products at a rate of two and three quarters percent (2.75 percent) multiplied by a company's gross receipts derived from first sales of petroleum products within this State as herein defined.

Example: Taxpayer has gross receipts of \$100.00. Gross receipts plus tax is \$102.75 (\$100.00 + .0275 × 100). This is the selling price. The tax due from the taxpayer, which is based on gross receipts net of the tax, is computed thus:

$102.75 \text{ (selling price)} \div 1.0275 = 100.00 \text{ (gross receipts net of tax)}$

$100.00 \times .0275 \text{ (Tax rate)} = 2.75 \text{ Tax Due}$

(b) On and after July 1, 1991, but before July 1, 2000, the applicable tax rate for fuel oils, aviation fuels and motor fuels including propane sold as a motor fuel shall be converted by an adjustment to a cents per gallon rate. (The applicable rate for receipts from the sale of other products remains at 2.75 percent.) Calculations made pursuant to N.J.S.A. 54:15B-3 require that the rate be recalculated semiannually, but in any event a minimum cents per gallon rate is set forth in N.J.S.A. 54:15B-3. This minimum cents per gallon rate is determined by the average retail price of regular unleaded gasoline in the State in December 1990 as determined by the Board of Public Utilities, Office of the Economist. This price was \$1.442. At 2.75 percent, this yields a minimum rate of 3.9655 cents per gallon, which is rounded to four cents. The May 1991 survey by the Board of Public Utilities yields a price of \$1.149 per gallon or a tax rate of 3.16 cents, less than the minimum. Thus, for the period on and after July 1, 1991 through December 31, 1991 the minimum rate of four cents per gallon shall be applied to all sales of subject products. A new rate will be struck in December 1991 in accordance with the above procedures for the subsequent six months period through June 30, 1992 based on the November Board of Public Utilities survey. Thereafter through June 30, 2000, the Division will revise the rate semiannually and the public will be notified.

Example: Products such as, but not necessarily limited to, gasoline, diesel fuel, and jet fuel sold in August 1991 are taxed at four cents per gallon. Propane sold as a motor fuel to propel a vehicle is also taxed at four cents per gallon. Receipts from sales of products such as lubricating oil, and mineral jelly would be taxed at a rate of 2.75 percent.

(c) On and after July 1, 2000, the applicable tax rate for fuel oils, aviation fuels and motor fuels including propane sold as a motor fuel shall be four cents per gallon.

Public Notice: Tax rate \$0.04 per gallon, effective January 1 through June 30, 1995.

See: 27 N.J.R. 247(b).

Public Notice: Tax rate \$0.04 per gallon, effective January 1, 1996 through June 30, 1996.

See: 28 N.J.R. 1078(d).

Public Notice: Tax rate \$0.04 per gallon, effective July 1, 1996 through December 31, 1996.

See: 28 N.J.R. 4122(a).

Public Notice: Tax rate \$0.04 per gallon, effective January 1, 1997 through June 30, 1997.

See: 29 N.J.R. 513(c).

Public Notice: Tax rate \$0.04 per gallon, effective July 1, 1997 through December 31, 1997.

See: 29 N.J.R. 3509(a).

Public Notice: Tax rate \$0.04 per gallon, effective January 1, 1998 through June 30, 1998.
 See: 30 N.J.R. 741(a).
 Public Notice: Tax rate \$0.04 per gallon, effective July 1, 1998 through December 31, 1998.
 See: 30 N.J.R. 3558(a).
 Public Notice: Tax rate \$0.04 per gallon, effective January 1, 1999 through June 30, 1999.
 See: 31 N.J.R. 694(a).
 Public Notice: Tax rate \$0.04 per gallon, effective July 1, 1999 through December 31, 1999.
 See: 31 N.J.R. 2277(a).
 Public Notice: Tax rate \$0.04 per gallon, effective January 1, 2000 through June 30, 2000.
 See: 32 N.J.R. 328(b).
 Amended by R.2002 d.211, effective July 1, 2002.
 See: 33 N.J.R. 4203(a), 34 N.J.R. 2324(a).
 In (b), inserted "but before July 1, 2000," in the first sentence and inserted "through June 30, 2000" in the last sentence; added (c).

18:18A-2.2 Tax on imports

(a) A company which imports or causes to be imported petroleum products for use or consumption by it within this State shall be liable for a tax imposed at the rate of two and three quarters percent (2.75 percent) multiplied by the consideration given or contracted to be given or at the per gallon rate if applicable for such petroleum products provided that the consideration given or contracted to be given for all such deliveries made during a quarterly period exceeds a threshold amount of \$100,000 or \$5,000, on and after July 1, 1991. This tax is not imposed upon a company subject to and paying a tax under N.J.A.C. 18:18A-2.1 upon such company's gross receipts from first sales of petroleum products within this State which receipts include gross receipts attributable to such imported or caused to be imported petroleum products. Importation does not include the consumption of fuel as part of an interstate journey where the interstate vehicle consuming the fuel is simply passing through the State.

Example: Farmer A purchases \$95,000 worth of diesel fuel in Pennsylvania, which is delivered to a tank on his farm in Salem County during October, November and December, 1990. The farmer owes no tax on the purchase price of the fuel. Farmer B purchases \$105,000 worth of diesel fuel in Pennsylvania which is delivered during the same period to his farm in Salem County. Farmer B owes a tax of \$2,887.50 (\$105,000 × 2.75 percent).

(b) Effective on and after July 1, 1991, the threshold for imported petroleum products has been reduced to \$5,000 per quarter.

Example: In July 1991 Farmer A purchases 5,000 gallons of diesel fuel in Pennsylvania at 90 cents per gallon, for a total of \$4,500, which is delivered to a tank on his farm in Salem County during August and September 1991. The farmer owes no tax on the purchase price of the fuel since the price paid was less than \$5,000. Farmer B purchases 6,000 gallons worth of diesel fuel in Pennsylvania at 90 cents per gallon for a total of \$5,400, which is delivered during the same period to his farm in Salem County. Farmer B owes tax of \$240 (6,000 gallons × \$0.04). Receipts from sales of fuel oil (such as diesel fuel) are taxed at four cents per gallon on and after July 1, 1991.

18:18A-2.3 Receipts from sales subject to tax

(a) Receipts from first sales of petroleum products within this State as herein defined are subject to tax. Certain receipts, for example, from sales for exportation, sales of No. 2 fuel oil, propane for residential use, and the tax imposed by the Act are not included in arriving at gross receipts subject to tax. On and after July 1, 1991 the Act contains exemptions or exclusions for receipts from sales to the State, or municipal governments, their agencies or instrumentalities, and to qualified exempt organizations employing authorized purchase procedures. In addition, exemption from tax for receipts from sales to the Federal government is effective on and after July 1, 1990.

Example 1: Company R collects used oil from various generators and produces a recycled fuel. Subsequent sales of its petroleum product by company R are considered to produce gross receipts subject to tax under the Act. The statute contains no exemption for sales of recycled oil.

Example 2: In July of 1991 Company S sells petroleum products to Hudson County, Jersey City, the U.S. Government, and the New Jersey Transit Authority. The gross receipts of Company S attributable to such sales are not subject to tax. The taxing statute contains an exemption for a company's gross receipts derived from sales to all governmental agencies or authorities on and after July 1, 1991. Receipts from sales to the United States Government are not subject to tax on and after July 1, 1990 pursuant to P.L. 1991, c.19.