

54:15B-2

LEGISLATIVE HISTORY CHECKLIST  
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(Petroleum  
products--gross  
receipt tax--  
revise method of  
calculation)

LAWS OF: 1991

CHAPTER: 181

Bill No: A4728

Sponsor(s): Duch, Bryant, Gill

Date Introduced: April 15, 1991

Committee: Assembly: Appropriations

Senate: -----

Amended during passage: Yes      Amendments during passage  
denoted by asterisks.

Date of Passage: Assembly: June 24, 1991

Senate: June 24, 1991

Date of Approval: June 28, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: No

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

[SECOND REPRINT]  
ASSEMBLY, No. 4728

STATE OF NEW JERSEY

INTRODUCED APRIL 15, 1991

By Assemblymen DUCH, BRYANT and Gill

1 AN ACT concerning the tax on the sale and use of petroleum  
2 products, amending and supplementing P.L.1990, c.42.

3  
4 BE IT ENACTED *by the Senate and General Assembly of the*  
5 *State of New Jersey:*

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

8 2. For the purposes of this act:

9 "Company" includes a corporation, partnership, limited  
10 partnership, association, individual, or any fiduciary thereof.

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

13 "First sale of petroleum products within this State" means the  
14 initial sale of a petroleum product delivered to a location in this  
15 State. [A sale of petroleum products is presumed to be a "first  
16 sale of petroleum products within this State" unless the seller is  
17 in receipt of a certification, in such form as the director may  
18 prescribe, indicating a prior "first sale of petroleum products  
19 within this State."] A "first sale of petroleum products within  
20 this State" does not include a book or exchange transfer of  
21 petroleum products if such products are intended to be sold in the  
22 ordinary course of business.

23 "Gross receipts" means all consideration derived from the first  
24 sale of petroleum products within this State except sales of <sup>1</sup>:

25 a.<sup>1</sup> asphalt <sup>1</sup>[, petroleum products bunkered into marine  
26 vessels engaged in interstate or foreign commerce];<sup>1</sup>

27 <sup>1</sup>b.<sup>1</sup> petroleum products sold pursuant to a written contract  
28 extending one year or longer to nonprofit entities qualifying  
29 under subsection (b) of section 9 of P.L.1966, c.30 (C.54:32B-9)  
30 <sup>1</sup>[,] as evidenced by an invoice in form prescribed by subsection  
31 (b) of section 3 of P.L.1991, c.19 (C.54:15B-10);<sup>1</sup> <sup>2</sup>[and]<sup>2</sup>

32 <sup>1</sup>c.<sup>1</sup> petroleum products sold to governmental entities  
33 qualifying under subsection (a) of section 9 of P.L.1966, c.30  
34 (C.54:32B-9) as evidenced by an invoice in form prescribed by  
35 subsection (b) of section 3 of P.L.1991, c.19 (C.54:15B-10);<sup>2</sup> and

36 d. polymer grade propylene used in the manufacture of  
37 polypropylene<sup>2</sup>.

38 "Petroleum products" means refined products made from crude  
39 petroleum and its fractionation products, through straight

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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup> Assembly AAP committee amendments adopted June 13, 1991.

<sup>2</sup> Assembly floor amendments adopted June 20, 1991.

1 distillation of crude oil or through redistillation of unfinished  
2 derivatives, but shall not mean the products commonly known as  
3 number 2 heating oil<sup>1,1</sup> number 4 heating oil, number 6 heating  
4 oil, kerosene and propane gas to be used exclusively for  
5 residential [heating] use.

6 "Quarterly period" means a period of three calendar months  
7 commencing on the first day of January, April, July or October  
8 and ending on the last day of March, June, September or  
9 December, respectively.

10 <sup>1</sup>"Retail gasoline price survey" means a Statewide  
11 representative random sample of retail gasoline prices conducted  
12 by the Board of Public Utilities, Office of the Economist, or its  
13 successor, that shall be completed for the month of November  
14 and May of each year.

15 "Retail price per gallon" means the price posted by gasoline  
16 retailers in the State for unleaded regular gasoline.

17 "Unleaded regular gasoline" means gasoline of the octane  
18 rating equal to the lowest octane rated gasoline offered for sale  
19 at a majority of the gasoline retailers in the State.<sup>1</sup>

20 (cf: P.L.1990, c.42, s.2)

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

23 3. a. There is imposed on each company which is engaged in  
24 the refining or distribution, or both, of petroleum products and  
25 which distributes such products in this State a tax at the rate of  
26 two and three quarters percent (2 3/4%) of its gross receipts  
27 derived from the first sale of petroleum products within this  
28 State; provided however, that the applicable tax rate for fuel  
29 oils, aviation fuels and motor fuels subject to tax under  
30 R.S.54:39-1 et seq. shall be converted to a cents per gallon rate  
31 and adjusted <sup>1</sup>[twice annually] semiannually by the director<sup>1</sup>, on  
32 January 1 and July 1, to reflect <sup>1</sup>[petroleum price variations] the  
33 average retail price per gallon of unleaded regular gasoline in the  
34 State<sup>1</sup>, as determined <sup>1</sup>in the most recent retail gasoline price  
35 survey<sup>1</sup> by the <sup>1</sup>[director,] Board of Public Utilities, Office of the  
36 Economist, or its successor. Any change in the cents per gallon  
37 rate so determined by the director shall be rounded upward or  
38 downward to the nearest tenth of a cent. The adjusted rate shall  
39 be<sup>1</sup> effective for tax <sup>1</sup>[reports on and] due for months ending<sup>1</sup>  
40 after those dates <sup>1</sup>[, provided however that the price per gallon  
41 used in that calculation shall not be less than]. There shall be a  
42 minimum cents per gallon tax rate, rounded to the nearest cent,  
43 that shall be calculated by the use of<sup>1</sup> the average retail price  
44 per gallon of unleaded regular gasoline <sup>1</sup>[on] in<sup>1</sup> December <sup>1</sup>[31,]<sup>1</sup>  
45 1990, as determined <sup>1</sup>in a survey of retail gasoline prices that  
46 included a Statewide representative random sample conducted in  
47 December 1990 for that month<sup>1</sup> by the Board of Public Utilities,  
48 Office of the Economist; and

49 b. There is imposed on each company that imports or causes to

1 be imported, other than by a company subject to and having paid  
2 the tax on those imported petroleum products that have  
3 generated gross receipts taxable under subsection a. of this  
4 section, petroleum products for use or consumption by it within  
5 this State a tax at the rate of two and three quarters percent (2  
6 3/4%) of the consideration given or contracted to be given for  
7 such petroleum products if the consideration given or contracted  
8 to be given for all such deliveries made during a quarterly period  
9 exceeds ~~[\$100,000]~~ \$5,000; provided however, that the applicable  
10 tax rate for fuel oils, aviation fuels and motor fuels subject to  
11 tax under R.S.54:39-1 et seq. shall be converted to a cents per  
12 gallon rate and adjusted <sup>1</sup>[twice annually] semiannually by the  
13 director<sup>1</sup>, on January 1 and July 1, to reflect <sup>1</sup>[petroleum price  
14 variations] the average retail price per gallon of unleaded regular  
15 gasoline in the State<sup>1</sup>, as determined <sup>1</sup>in the most recent retail  
16 gasoline price survey<sup>1</sup> by the <sup>1</sup>[director,] Board of Public  
17 Utilities, Office of the Economist, or its successor. Any change  
18 in the cents per gallon rate so determined by the director shall be  
19 rounded upward or downward to the nearest tenth of a cent. The  
20 adjusted rate shall be<sup>1</sup> effective for tax <sup>1</sup>[reports on and] due for  
21 months ending<sup>1</sup> after those dates <sup>1</sup>[, provided however that the  
22 price per gallon used in that calculation shall not be less than] .  
23 There shall be a minimum cents per gallon tax rate, rounded to  
24 the nearest cent, that shall be calculated by the use of<sup>1</sup> the  
25 average retail price per gallon of unleaded regular gasoline <sup>1</sup>[on]  
26 in<sup>1</sup> December <sup>1</sup>[31,]<sup>1</sup> 1990, as determined <sup>1</sup>in a survey of retail  
27 gasoline prices that included a Statewide representative random  
28 sample conducted in December 1990 for that month<sup>1</sup> by the  
29 Board of Public Utilities, Office of the Economist.

30 (cf: P.L.1990, c.42, s.3)

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

33 5. a. Gross receipts of a company making first sales of  
34 petroleum products within this State shall not include  
35 consideration derived from the first sale of petroleum products  
36 within this State sold for exportation from this State for sale or  
37 use outside this State or sales within this State between  
38 <sup>1</sup>[licensed]<sup>1</sup> companies <sup>1</sup>[approved by the director] licensed  
39 pursuant to section 6 of P.L. , c. (C. )(now pending before  
40 the Legislature as this bill)<sup>1</sup>.

41 b. Gross receipts of a company making first sales of petroleum  
42 products within this State shall not include consideration derived  
43 from the first sale of petroleum products within this State to the  
44 United States government, or to any of its departments, agencies  
45 or instrumentalities, for use in a federal government function or  
46 operation. A company making a first sale of petroleum products  
47 the gross receipts from which are exempt from tax pursuant to  
48 this subsection shall report such sales to the director at such  
49 times and in such detail as the director may require. This

1 exemption may be claimed by a company otherwise subject to the  
2 tax under this act at any time within two years after the date of  
3 the first sale of petroleum products within this State for which  
4 the exemption is claimed, but no claim made after the expiration  
5 of that two year period shall be recognized for any purpose by the  
6 State or any agency thereof.

7 c. A company shall be allowed a credit against the tax imposed  
8 by subsection a. of section 3 of this act if a purchaser of  
9 petroleum products first sold within this State subsequently sells  
10 the petroleum products for exportation from this State for sale or  
11 use outside this State; provided:

12 (1) the purchaser who makes the sale for exportation from this  
13 State for sale or use outside this State issues a certification, on  
14 such form as the director may prescribe, evidencing a sale or use  
15 outside this State, and

16 (2) the company liable for the tax imposed under the provisions  
17 of this act has paid to the purchaser making the sale outside this  
18 State an amount equal to the tax imposed on the gross receipts  
19 derived from the first sale of petroleum products within this  
20 State to such purchaser.

21 <sup>1</sup>d. A company shall be allowed a credit against the tax  
22 imposed by subsection b. of section 3 of this act pursuant to such  
23 form as may be required by the director if the company importing  
24 or causing to be imported petroleum products for use or  
25 consumption by it within this State subsequently exports the  
26 petroleum products for sale or use outside this State.<sup>1</sup>

27 (cf: P.L.1991, c.19, s.1)

28 4. Section 7 of P.L.1990, c.42 (C.54:15B-7) is amended to read  
29 as follows:

30 7. a. A company subject to tax under this act shall, on or  
31 before the [20th] 25th [day following the end of each quarterly  
32 period] of a month, file a [return under oath] remittance to the  
33 director on such forms as may be prescribed by the director and  
34 pay the full amount of the tax due on gross receipts subject to  
35 tax derived from the first sale of petroleum products within this  
36 State and the consideration given or contracted to be given for  
37 all deliveries of petroleum products for use or consumption by it  
38 within this State for [that] the preceding [quarterly period ended]  
39 month.

40 b. On or before the 25th day following the end of a quarterly  
41 period, a company subject to tax under this act shall file a  
42 reconciliation return under oath to the director on such forms as  
43 may be prescribed by the director reflecting such information and  
44 payments from the preceding quarterly period as the director  
45 shall deem necessary.

46 (cf: P.L.1990, c.42, s.7)

47 5. Section 8 of P.L.1990, c.42 (C.54:15B-8) is amended to read  
48 as follows:

49 8. a. (1) If a return required by this act is not filed, or if a

1 return when filed is incorrect or insufficient in the opinion of the  
2 director, the amount of tax due shall be determined by the  
3 director from the information available.

4 (2) If because of an affiliation of interests between a company  
5 subject to tax under this act and any purchaser the gross receipts  
6 from sale transactions are not indicative of or representative of  
7 market price, the director may at the director's discretion,  
8 utilize external indices to establish gross receipts.

9 Notice of a determination pursuant to this subsection shall be  
10 given to the company liable for the payment of the tax. Such  
11 determination shall finally and irrevocably fix the tax unless the  
12 company against which it is assessed, within 30 days after  
13 receiving notice of the determination, shall apply to the director  
14 for a hearing, or unless the director on the director's own motion  
15 shall redetermine the same. After such hearing the director shall  
16 give notice of the determination to the company to which the tax  
17 is assessed.

18 b. The certificate of the director to the effect that a tax has  
19 not been paid, that a return has not been filed, that a prescribed  
20 certificate has not been issued, that information has not been  
21 supplied or that inaccurate information has been supplied  
22 pursuant to the provisions of this act or rules or regulations  
23 adopted hereunder shall be prima facie evidence thereof.

24 c. In addition to the other powers granted to the director in  
25 this section, the director is hereby authorized and empowered:

26 (1) To delegate to any officer or employee of the division such  
27 powers and duties as the director may deem necessary to carry  
28 out the provisions of this act, and the person or persons to whom  
29 such power has been delegated shall possess and may exercise all  
30 of said powers and perform all of the duties delegated by the  
31 director;

32 (2) To prescribe and distribute all necessary forms and  
33 certificates for the implementation of this act; and

34 (3) To administer and enforce the tax imposed by this act and  
35 to make and adopt such rules and regulations and to require such  
36 facts and information to be reported as the director may deem  
37 necessary to enforce the provisions of this act.

38 d. The tax imposed by this act shall be governed in all respects  
39 by the provisions of the State Tax Uniform Procedure Law,  
40 R.S.54:48-1 et seq., except only to the extent that a specific  
41 provision of this act may be in conflict therewith.

42 (cf: P.L.1990, c.42, s.8)

43 6. (New section) Licensed distributors pursuant to  
44 <sup>1</sup>[R.S.54:39-3] R.S.54:39-17<sup>1</sup>, "commercial consumers," <sup>1</sup>[which]  
45 that<sup>1</sup> are deemed to include those companies <sup>1</sup>[which] that<sup>1</sup>  
46 purchase, consume, blend or distribute substantial quantities of  
47 petroleum products in the State, <sup>1</sup>[and]<sup>1</sup> companies making sales  
48 pursuant to a written contract extending for one year or longer to  
49 nonprofit entities qualifying under subsection (b) of section 9 of

1 P.L.1966, c.30 (C.54:32B-9) <sup>1</sup>[or] as evidenced by an invoice in  
2 form prescribed by subsection (b) of section 3 of P.L.1991, c.19  
3 (C.54:15B-10), and companies making sales<sup>1</sup> to governmental  
4 entities qualifying under subsection (a) of section 9 of P.L.1966,  
5 c.30 (C.54:32B-9) as evidenced by an invoice in form prescribed  
6 by subsection (b) of section 3 of P.L.1991, c.19 (C.54:15B-10) <sup>1</sup>,<sup>1</sup>  
7 may<sup>1</sup>,<sup>1</sup> upon application to and approval by the director<sup>1</sup>,<sup>1</sup> elect  
8 to be recognized as a licensed company pursuant to this act and  
9 pay directly to the division the taxes imposed by this act. The  
10 director may impose limitations or restrictions on <sup>1</sup>the<sup>1</sup> direct  
11 payment <sup>1</sup>[permits] of taxes permitted by licensed companies<sup>1</sup>  
12 for purposes of effective implementation of the tax imposed by  
13 this act.

14 7. (New section) "Gross receipts," as otherwise defined by  
15 section 2 of P.L.1990, c.42 (C.54:15B-2), shall not include  
16 receipts from <sup>1</sup>sales of petroleum products used by marine  
17 vessels engaged in interstate or foreign commerce and<sup>1</sup> sales of  
18 aviation fuels used by common carriers in interstate or foreign  
19 commerce other than the "burnout" portion which shall be  
20 taxable pursuant to rules promulgated by the Director.

21 8. This act shall take effect on the first day of the quarterly  
22 period next following enactment, except that sections 3, 6 and 7  
23 shall be retroactive to July 1, 1990.

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25

#### 26 STATE TAXATION

27

28 Amends petroleum products gross receipts tax to allow cents per  
29 gallon calculation on certain sales, exempts certain governments  
30 and public service groups.

1 R.S.54:39-3, "commercial consumers," which are deemed to  
2 include those companies which purchase, consume, blend or  
3 distribute substantial quantities of petroleum products in the  
4 State, and companies making sales pursuant to a written contract  
5 extending for one year or longer to nonprofit entities qualifying  
6 under subsection (b) of section 9 of P.L.1966, c.30 (C.54:32B-9) or  
7 to governmental entities qualifying under subsection (a) of  
8 section 9 of P.L.1966, c.30 (C.54:32B-9) as evidenced by an  
9 invoice in form prescribed by subsection (b) of section 3 of  
10 P.L.1991, c.19 (C.54:15B-10) may upon application to and  
11 approval by the director elect to be recognized as a licensed  
12 company pursuant to this act and pay directly to the division the  
13 taxes imposed by this act. The director may impose limitations  
14 or restrictions on direct payment permits for purposes of  
15 effective implementation of the tax imposed by this act

16 7. (New section) "Gross receipts," as otherwise defined by  
17 section 2 of P.L.1990, c.42 (C.54:15B-2), shall not include  
18 receipts from sales of aviation fuels used by common carriers in  
19 interstate or foreign commerce other than the "burnout" portion  
20 which shall be taxable pursuant to rules promulgated by the  
21 Director.

22 8. This act shall take effect on the first day of the quarterly  
23 period next following enactment, except that sections 3, 6 and 7  
24 shall be retroactive to July 1, 1990.

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### *sponsors'* STATEMENT

29 This bill contains revenue neutral technical amendments to the  
30 petroleum products gross receipts tax which will fashion the  
31 statute to the characteristics of the petroleum industry in New  
32 Jersey.

33 The bill authorizes the percentage of gross receipts tax  
34 calculation to be converted into a cents per gallon method by the  
35 Director of the Division of Taxation for ease for calculating the  
36 applicable tax for fuel oils, aviation fuels and motor fuels.

37 For convenience, the amendments recognize resales among  
38 distributors and permit certain consumers and suppliers to elect  
39 to be treated as taxpayers, with the director's concurrence and  
40 subject to the director's discretion.

41 The due date for tax payments has been moved to the 25th day  
42 of each month, for the convenience of taxpayers, and reports and  
43 reconciliations are to be made quarterly.

44 Provisions have been included to exempt asphalt, bunker fuel  
45 operations, fuels for certain vessels and to apply a "burn out"  
46 formula for airlines. In addition governmental entities and  
47 instrumentalities and certain public interest organizations that  
48 are exempt from the sales and use tax may purchase petroleum  
49 products exempt from the petroleum products gross receipts tax.



STATE TAXATION

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Amends petroleum products gross receipts tax to allow cents per gallon calculation on certain sales, exempts certain governments and public service groups.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4728

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 13, 1991

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4728 with committee amendments.

Assembly Bill No. 4728, as amended, converts the method of calculating the tax on the sale and use of certain petroleum products from a percentage of gross receipts to a cents per gallon sold method based upon the average retail price of a gallon of unleaded regular gasoline. The bill establishes a minimum tax rate for those fuels based on the average price of unleaded regular gasoline in December, 1990. The actual tax rate may vary above this minimum tax rate based on semiannual price surveys. Exempt from the tax are asphalt, petroleum products used by marine vessels in interstate or foreign commerce, sales of petroleum products to governmental entities and instrumentalities, sales under certain long-term agreements with charitable nonprofit organizations that are exempt from the State sales tax and petroleum products resold between licensed direct taxpayers. The bill limits the taxation of certain sales of aviation fuels to a "burn out" portion to be established by the Division of Taxation pursuant to regulation. A credit is allowed against the payment of use tax on petroleum products that are imported for use or consumption within the State and subsequently exported for sales or use outside this State. The bill also permits certain commercial consumers and distributors to elect to be treated as direct taxpayers on their taxable receipts, with the approval of the Director of the Division of Taxation and subject to the director's discretion.

The due date for tax payments has been moved from the 20th day following each calendar quarter to the 25th day following each month with reconciliation returns to be made quarterly.

The bill takes effect on the first day of the quarterly period next following enactment, except that the exemptions for sales between licensed direct taxpayers, sales for use by marine vessels in interstate or foreign commerce, sales for a portion of certain aviation fuels and the use tax credit for exports of previously imported petroleum products are retroactive to July 1, 1990.

FISCAL IMPACT

No fiscal note or estimate has been prepared for this bill. The sponsor's statement indicates that there will be no significant net fiscal impact resulting from the various changes to the petroleum products gross receipts tax contained in this bill.

COMMITTEE AMENDMENTS

The committee amendments provide for a use tax credit for companies that import petroleum products for use or consumption within the State and subsequently export the product for sales or use outside this State. The amendments also clarify the method by which the semiannual adjustments to the cents per gallon tax rate will be determined and make various technical clarifications to the bill. In addition, the amendments make the tax exemption for petroleum products used by marine vessels engaged in interstate or foreign commerce retroactive to July 1, 1990. As amended, this bill is identical to S-3429 (1R).