

54:39-55

LEGISLATIVE HISTORY CHECKLIST

NJSA: 54:39-55 and 54:39-64

(Heating oil--non-taxable--diversion for use as diesel fuel--criminal offense.)

LAWS OF: 1985

CHAPTER: 340

Bill No: S633

Sponsor(s): Bassano and Di Francesco

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Labor, Industry and Professions

Amended during passage: Yes

Substituted for A750 (not attached since identical to S633). Amendments during passage denoted by asterisks.

Date of Passage:

Assembly: September 9, 1985

Senate: May 14, 1984

Date of Approval: October 18, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

Veto Message: No

Message on Signing: ~~No~~ Yes

Following were printed:

Reports: No

Hearings: No

# STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Senators BASSANO and DiFRANCESCO

AN ACT concerning the taxation of motor fuels and amending R. S. 54:39-55 and R. S. 54:39-64.

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

1 1. R. S. 54:39-55 is amended to read as follows:

2 54:39-55. Any person, firm, partnership, association or corpora-  
3 tion or any officer or agent thereof failing to pay the tax as herein  
4 provided, or violating any of the provisions of article 3 of this  
5 chapter (R. S. 54:39-17 et seq.), or making any false statement,  
6 or concealing any material fact in any report or affidavit is guilty  
7 of a crime of the fourth degree<sup>1</sup>, and upon conviction thereof shall  
8 be punished by a fine of not more than \$5,000.00 or by imprison-  
9 ment for not more than 18 months, or by both such fine and  
10 imprisonment<sup>1</sup>.

1 2. R. S. 54:39-64 is amended to read as follows:

2 54:39-64. (a) Any person importing fuels, as herein defined,  
3 into this State, for the purpose of selling same incidental to his  
4 principal business of buying and selling fuels in this State or for  
5 the purpose of consuming the same, or for the purpose of blending  
6 the same with other fuels upon which the tax provided for in this  
7 chapter has been prepaid, or is properly owing to the State, shall  
8 be required to obtain a special permit (special license A) from the  
9 Director of the Division of Taxation and shall furnish bond as  
10 provided in this chapter. Such person shall be required to file a  
11 report with the director, disclosing the amount of fuel so imported,  
12 and such additional information as the director may require for

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted April 30, 1984.

13 the proper administration of this chapter, within five days from the  
14 receipt of such fuels. Upon application to the director, the period  
15 within which such reports shall be filed may be extended to a period  
16 of 60 days, if it shall be deemed advisable by the director. A tax,  
17 at the rate per gallon specified in section 54:39-27 of this Title,  
18 on the total number of gallons so imported, together with any  
19 unpaid tax on such other fuels, shall be paid to the director and  
20 accompany the report.

21 Every person importing fuel into this State shall be presumed  
22 to have sold, consumed or to have blended such fuel, and proof of  
23 such importation shall be prima facie evidence that such fuel is  
24 taxable, as provided herein.

25 Any person violating any provisions of this subsection (a) shall  
26 be guilty of a **[misdemeanor]** *crime of the fourth degree*.

27 (b) Any person purchasing motor fuel on which there has been  
28 no charge made to him of the motor fuel tax thereon, if the same  
29 be thereafter used or sold for use in the operation of a motor  
30 vehicle upon the highways, shall be required to obtain a special  
31 license B from the director and shall be required to pay a tax, at  
32 the rate per gallon specified in section 54:39-27 of this Title, on the  
33 total number of gallons so used or sold for use. Such person shall,  
34 on or before the fifteenth day of each month, render a report to  
35 the director, stating the number of gallons of fuel purchased, used  
36 or sold for use in this State by him during the preceding calendar  
37 month and such additional information as the director may require.  
38 The tax, as herein provided, shall be paid to the director and  
39 accompany such report.

40 Any person who, having purchased motor fuel on which there  
41 has been no charge made to him of the motor fuel tax thereon, shall  
42 thereafter use or sell such motor fuel for use in the operation of  
43 a motor vehicle upon the highways without having first secured a  
44 special license B from the director, shall, in the absence of a prior  
45 conviction, be liable to a penalty of \$25.00 for each offense but not  
46 in excess of \$100.00 for an aggregate number of offenses not ex-  
47 ceeding five; a penalty of \$25.00 for each offense but not in excess  
48 of \$250.00 for an aggregate number of offenses in excess of five;  
49 provided, however, that in the event of a prior conviction the  
50 penalty shall be \$100.00 for each offense. Any person who, after  
51 conviction, shall fail to forthwith pay any of the foregoing penalties  
52 imposed against him, shall be imprisoned for a period of not less  
53 than 10 nor more than 30 days.

54 Any person not holding a special license B who shall fail to file  
55 the report required by this subsection (b) on the day it shall be

56 due, shall forfeit as a penalty an amount as provided in the State  
57 Tax Uniform Procedure Law, subtitle 9 of Title 54 of the Revised  
58 Statutes. Any such person who shall fail to pay the tax required  
59 by this subsection (b) on the day when it shall be due shall forfeit  
60 as a penalty an amount equivalent to 20% of the tax due. In addi-  
61 tion to such penalty, such person shall pay interest on the tax due  
62 at the rate of 1½% for each month or fraction thereof that the tax  
63 remains unpaid, to be calculated from the date the tax was origi-  
64 nally due until the date of actual payment.

65 Any holder of a special license B who shall fail to file the report  
66 required by this subsection (b) on the day it shall be due, shall  
67 forfeit as a penalty an amount as provided in the State Tax Uni-  
68 form Procedure Law, subtitle 9 of Title 54 of the Revised Statutes.  
69 Any holder of a special license B who shall fail to pay the tax  
70 required by this subsection (b) on the date when it shall be due  
71 shall forfeit as penalties and interest an amount as provided in  
72 the State Tax Uniform Procedure Law, subtitle 9 of Title 54 of  
73 the Revised Statutes.

74 The director, if satisfied that the failure to file the report or  
75 pay the tax was excusable, may remit or waive the payment of the  
76 whole or part of any penalty and the payment of any interest  
77 charge as provided in the State Tax Uniform Procedure Law, sub-  
78 title 9 of Title 54 of the Revised Statutes.

79 All *civil* penalties and interest assessed pursuant to the provi-  
80 sions of this subsection (b) shall be payable forthwith after notice  
81 and demand shall be mailed by the director to the person con-  
82 cerned. If payment be not made within 15 days thereafter, the  
83 penalty and interest shall be sued for in the manner set forth in  
84 sections 54:39-59 and 54:39-60 of the Revised Statutes.

85 *Any person who knowingly makes any false statement or conceals*  
86 *any material fact in the report required by this subsection (b) is*  
87 *\*[subject to the penalties set forth in R. S. 54:39-55]\* \*guilty of*  
87A *a crime of the fourth degree\*.*

88 *Any person who knowingly fails to file the report required by*  
89 *this subsection (b) or knowingly fails to pay the tax required by*  
90 *this subsection (b), when the amount of payable tax thereby avoided*  
91 *is \$400.00 or more, is \*[subject to the penalties set forth in R. S.*  
92 *54:39-55]\* \*guilty of a crime of the fourth degree\*.*

93 (c) This section, including subsections (a) and (b) shall not  
94 apply to distributors duly licensed in accordance with the provi-  
95 sions of this chapter.

1 3. This act shall take effect immediately.

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## STATEMENT

The purpose of this bill is to curb the large scale substitution of nontaxable #2 heating oil for diesel fuel, which is causing millions of dollars in tax loss to New Jersey each year. This problem has been exacerbated with the advent of the fuel shortage and the increase in diesel fuel use. The diversion of #2 heating oil to diesel use without payment of tax is made a crime of the fourth degree when the amount of tax evaded exceeds \$400.00 in any reporting period.

Section 54:39-55 is amended to make the penalties for motor fuel tax evasion conform with those provided by the New Jersey Code of Criminal Justice. (See section 2C:43-2, providing that all persons convicted of an offense must be sentenced in accordance with Chapter 2C).

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ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 633**

**STATE OF NEW JERSEY**

DATED: NOVEMBER 8, 1984

Section 1 of the bill amends R. S. 54:39-55 to make the penalties for evasion of paying motor fuels taxes conform with those provided by the New Jersey Code of Criminal Justice.

Subsection (a) of R. S. 54:39-64 (section 2 of the bill), which requires persons importing fuels into the State to obtain a special license A, secure a bond, disclose the amount of fuels imported, and pay any unpaid motor fuels taxes, is amended to provide that violators are guilty of a crime of the fourth degree, instead of a misdemeanor.

Subsection (b) of R. S. 54:39-64 (section 2 of the bill), which requires a person who purchases motor fuels on which no motor fuels taxes have been paid and which are to be used in motor vehicles on the highways to obtain a special license B, report the number of gallons purchased, and pay the unpaid motor fuels taxes, is amended to provide that, in addition to any civil penalties provided, any person who knowingly makes any false statement or conceals any material fact in a report required under this subsection or who knowingly fails to file a report required by this subsection or knowingly fails to pay the taxes due when the amount is \$400.00 or more is guilty of a crime of the fourth degree.

SENATE LABOR, INDUSTRY AND PROFESSIONS  
COMMITTEE

STATEMENT TO

**SENATE, No. 633**

with Senate committee amendments

**STATE OF NEW JERSEY**

DATED: APRIL 12, 1984

Section 1 of the bill amends R. S. 54:39-55 to make the penalties for evasion of paying motor fuels taxes conform with those provided by the New Jersey Code of Criminal Justice.

Subsection (a) of R. S. 54:39-64 (section 2 of the bill), which requires persons importing fuels into the State to obtain a special license A, secure a bond, disclose the amount of fuels imported, and pay any unpaid motor fuels taxes, is amended to provide that violators are guilty of a crime of the fourth degree, instead of a misdemeanor.

Subsection (b) of R. S. 54:39-64 (section 2 of the bill), which requires a person who purchases motor fuels on which no motor fuels taxes have been paid and which are to be used in motor vehicles on the highways to obtain a special license B, report the number of gallons purchased, and pay the unpaid motor fuels taxes, is amended to provide that, in addition to any civil penalties provided, any person who knowingly makes any false statement or conceals any material fact in a report required under this subsection or who knowingly fails to file a report required by this subsection or knowingly fails to pay the taxes due when the amount is \$400.00 or more is guilty of a crime of the fourth degree.

S-2096, A-3730, A-955, S-633/A-750, S-339, S-3263, S-2212 Signed  
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October 29, 1985

S-633/A-750, sponsored by State Senator C. Louis Bassano, R-Union, and Assemblyman Walter J. Kavanaugh, R-Somerset, which makes certain cases of the diversion of non-taxable No. 2 heating oil for diesel fuel a fourth degree crime.

S-339, sponsored by State Senator Leonard T. Connors, Jr., R-Ocean, which permits counties to give county employees time off from work with pay to respond to alarms occurring in a municipality in which they work when they serve on a volunteer fire company or similar volunteer organization.

S-3263, sponsored by State Senator Walter Rand, D-Camden, which makes technical amendments to the statute governing taxation of packages of 25 cigarettes.

S-2212, sponsored by State Senator John F. Russo, D-Ocean, which streamlines the administrative procedures through which public use airports receive Federal funding by eliminating requirements that Federal funds be channeled through the State Department of the Treasury. The bill retains the Department of Transportation's approval requirements for grant applications.

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