



Chris Christie
Governor

Kim Guadagno
Lieutenant Governor

State of New Jersey
Department of the Treasury
Division of Taxation

Andrew P. Sidamon-Eristoff
State Treasurer

Michael Bryan
Acting Director of Taxation

SPECIAL NOTICE

MOTOR FUELS TAX ACT JULY 1, 2010

Chapter 22, P.L. 2010, the Motor Fuels Tax Act, effective July 1, 2010, as amended, and operative beginning January 1, 2011, repeals prior Motor Fuels legislation in order to make sweeping changes in the licensing, reporting, and the imposition and collection of the Motor Fuels Taxes.

In general, the new legislation means...

- A friendlier environment for businesses
 - Fewer licensees, thus fewer expenses
 - Fewer reports to file, thus fewer accounting expenses
- A simplified means of collecting the tax
 - Fewer licensees mean fewer types of customers and
 - Fewer distinctions regarding the location of pick ups, which means...
 - Fewer accounting expenses
- Increased enforcement
 - Dyed Fuel inspections
 - Rapid identification of problems
 - Increased penalties for violations of the Law

Forms and applications will be available on the Division of Taxation's website, www.state.nj.us/treasury/taxation. As the forms become available on the website, please look them over and refer to the instructions for specifics. The Division has an email account dedicated to address concerns or questions regarding the new legislation. Email fuel.tax@treas.state.nj.us for a prompt response

Highlights of the New Law

- **There are no rate changes.**
 - Gasoline and gasoline blends are taxed at 10½¢ per gallon
 - Diesel and diesel blends are taxed at 13½¢ per gallon.
 - Aviation fuels destined for General Aviation Airports are taxed at an additional 2¢ per gallon.
 - The changes affect some reporting of the Petroleum Products Gross Receipts Tax, but the rate for Motor Fuels remains at 4¢ per gallon.
 - LPG used as a motor fuel is taxed at 5¼¢ per gallon.
- **Taxing at the rack**
 - The tax is due from the Consumer, but it is remitted to the State by the Supplier, or in rare cases, by the Distributor. The Tax is pre-collected by the Supplier before going all the way down the supply chain.
 - Since the industry is accustomed to paying the tax on the 20th of each month, the Law allows for delayed payment to the Supplier. Rather than paying the moment the fuel passes the rack, a Supplier can delay collection of the tax until the 20th, and then remit it to the State on the 22nd. When a delayed payment agreement is in place, if the Distributor forwards the payment late, the Distributor, not the Supplier, faces penalties and interest.
 - If a Distributor obtains fuel from out of state, and the supplier is not licensed, then the Distributor is liable for the tax, which is due 3 days after import.
- **Recognition of Dyed Fuels**
 - With few exceptions, fuel is taxable unless dyed.
- **Floor Tax for fuels held in inventory**
 - Taxes must be paid on fuel held in inventory as of the close of business on the day preceding operative date of the Law – December 31, 2010.
 - Seller / User of Special Fuels, Importers, and Jobbers have fuel in inventory which would have been taxed if they had purchased it under the new law. The only way to collect the tax due is by way of a floor tax.
 - Those who have taxable fuel in inventory for which the tax has not been paid will take an inventory upon end of business on December 31, 2010. Understanding that they have not collected the tax from customers yet, the tax is not due until July 1, 2011. However, if you pay the tax due on or before January 31 of this year, you can take a 10% credit for rapid payment. There is no obligation either way – you choose what works.
 - Dead storage is not taxed at all. Dead Storage is 200 gallons for tanks with under 10,000 capacity; 400 gallons for tanks with greater capacity.
- **Alternative Fuels**
 - All grades of Fuel Grade Alcohol and all grades of Biodiesel are taxable. They are treated just like gasoline or diesel.

For those licensed as Motor Fuels Distributors

As per Section 151a of the Motor Fuels Tax Act of 2010, those who were licensed as Distributors under §54:39-1 et seq will automatically become licensed Motor Fuels Suppliers under §54:39-101 et seq unless:

- They receive special notice from the Division of Taxation informing them that their Distributor's License will not be converted; or
- They refuse the conversion of licensure by completing **Form MFA-3, Change of Status Request**, and remit it before December 15, 2010.

Distributors who refuse or are denied the conversion must cease all activities that require a license under §54:39-101 et seq on or before December 31, 2010. They must also file a final GA-1-D on or before January 20, 2011.

Distributors who accept the commutation of licensure will receive a Supplier's License that will expire on the same date as their former Distributors licenses would have expired if they had not been converted. Bonding requirements are unchanged. Converted Suppliers have until January 31, 2011 to have their surety bonds altered to reflect their new status as Motor Fuels Suppliers.

According to §54:39-102, a Supplier is one who is registered or required to be registered pursuant to 26 U.S.C. s.4101 for transactions in fuels in the terminal transfer system, *and* meets any of the following criteria:

1. is the position holder in a terminal or refinery in this State of New Jersey,
2. is the importer of 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 agreement which is treated as an exchange and appears on the records of the terminal operator,
4. is the position holder outside this state with respect to fuel which that person imports into this State,
5. is the producer of fuel grade alcohol or alcohol derived substances in this State,
6. is the importer of fuel grade alcohol or alcohol derived substances into this State, or
7. is a Permissive Supplier. A Permissive Supplier is an out of State supplier who elects to have a Supplier's License.

If you believe that you do *not* meet the qualifications of a Motor Fuels Supplier, but should be otherwise licensed, you must refuse the Motor Fuels Supplier license and request the appropriate license using **Form MFA-3, Change of Status Request** before December 15, 2010.

For those licensed as Motor Fuels Retailers

As per Section 151b of the Motor Fuels Tax Act of 2010, those who were licensed as Retailers under §54:39-1 et seq will automatically become licensed Motor Fuels Retail Dealers under §54:39-101 et seq unless:

- They receive special notice from the Division of Taxation informing them that their Retailer's License will not be converted or
- They refuse the conversion of licensure by completing **Form MFA-3, Change of Status Request**, and remit it before December 15, 2010.

Retailers who refuse or are denied the conversion must cease all activities that require a license under §54:39-101 et seq on or before December 31, 2010.

Retailers accepting the new Motor Fuels Retail Dealer Licenses will receive licenses that will expire on the same date as their former Retailer's licenses would have expired if they had not been converted.

Under the new law, there are three types of Retail Dealer licenses – Aviation Fuel Dealer, LPG Dealer, and Retail Dealer. If you are currently licensed as a Retailer because you sell LPG for highway use or Aviation Fuel, then you must refuse the Retail Dealer License and request the appropriate type of retail license using **Form MFA-3, Change of Status Request**.

According to §54:39-102, a Retail Dealer is one engaged in the business of selling or dispensing motor fuel to the consumer in this State. If you believe that you do *not* meet the qualifications of a Motor Fuels Retail Dealer, but should be otherwise licensed, you must refuse the Retail Dealer's License and request the appropriate license using **Form MFA-3, Change of Status Request** before December 15, 2010.

For those licensed as Motor Fuels Importers, Exporters, Wholesalers, and Jobbers

As per Section 151c of the Motor Fuels Tax Act of 2010, those who were licensed as Importers, Exporters, Wholesalers, and Jobbers under §54:39-1 et seq will automatically become licensed Distributors of Motor Fuels under §54:39-101 et seq unless:

- They receive special notice from the Division of Taxation informing them that their Importer's, Exporter's, Wholesaler's, and/or Jobber's License will not be converted or
- They refuse the conversion of licensure by completing **Form MFA-3, Change of Status Request**, and remit it before December 15, 2010.

Importers, Exporters, Wholesalers, and Jobbers who refuse or are denied the conversion must cease all activities that require a license under §54:39-101 et seq on or before December 31, 2010. They must make their final reports on or before January 20, 2011.

Importers, Exporters, Wholesalers, and Jobbers accepting the commutation of licensure will receive a Distributor of Motor Fuels License that will expire on the same date as their former licenses would have expired if they had not been converted.

According to §54:39-102, a Distributor is anyone who acquires motor fuel from a Supplier of Motor Fuels or another Distributor for subsequent sale. According to

§54:39-133, a Distributor's license is required for anyone other than a Supplier of Motor Fuels who does one or more of the following:

- Purchases in-state for resale
- Exports
- Imports
- Blends

The Distributor of Motor Fuels License that you receive will be categorized specifically to the activity in which your company engages. Exporters will receive a Distributor of Motor Fuels License for exporting; importers will receive one for importing, and so forth.

If you believe that you do *not* meet the qualifications of a Motor Fuels Distributor, but should be otherwise licensed, you must refuse the Distributor's license and request the appropriate license with **Form MFA-3, Change of Status Request** before December 15, 2010.

For those licensed as Motor Fuels Transporters

As per Section 151d of the Motor Fuels Tax Act of 2010, those who were licensed as Transporters under §54:39-1 et seq will automatically become licensed Motor Fuels Transporters under §54:39-101 et seq, and the conveyances registered for transporting fuel under §54:39-1 will be registered as a fuel conveyance under §54:39-101 et seq unless:

- They receive special notice from the Division of Taxation informing them that their Transporter's Retailer's License and vehicle registrations will not be converted or
- They refuse the conversion of licensure by completing **Form MFA-3, Change of Status Request**, and remit it before December 15, 2010.

Transporters who refuse or are denied the conversion must cease all activities that require a license under §54:39-101 et seq on or before December 31, 2010. They must make their final reports on or before January 20, 2011.

Transporters accepting licensure under the new Act will receive Transporters of Motor Fuels licenses that expire on the same date as their former licenses would have expired if they had not been converted.

If you believe that you do not meet the qualifications of a Motor Fuels Transporter, but should be otherwise licensed, you must refuse the Transporter's License and request the appropriate license with **Form MFA-3, Change of Status Request** before December 15, 2010.

For those licensed as Sellers / Users of Special Fuels

Under the Motor Fuels Act of 2010, there is no designation for a Seller / User of Special Fuels. You don't need a distinct license for selling diesel or kerosene. Your

license expires on December 31, 2010. You will file your final report on or before January 20, 2011. If you believe that you need a license, you will need to use **Form MFA-3, Change of Status Request** to request the appropriate license.

Dyed Fuel Provisions of the Act

According to §54:39-141b(3), Dyed Fuel is exempt from taxation. This will simplify record keeping and collections. §54:39-2 defines dyed fuel as diesel or kerosene that is dyed according to provisions of the Federal Government. §54:39-112 details usages of fuel that are exempt from the taxes. Fuel sold for one of the usages is exempt regardless of dying.

Using or selling dyed fuel for any use not specifically exempted by the Law is punishable by heavy fines that mirror the Federal penalties. §54:39-144 states that any person, and any officer, employee or agent of any person who participates in any act that violates the dyed provisions of the Law will be jointly and severally liable for the penalties.

Point of Taxation

§54:39-104 imposes the taxes on fuel removed from the terminal transfer system, other than by a bulk transfer. Suppliers of Motor Fuels removed from the terminal system collect the tax and hold it in trust for the State, and remit it on or before the 22nd day of the month following the removal.

As New Jersey previously taxed fuels at points lower down the supply chain, individuals licensed as Importers and Jobbers paid the taxes due on the 20th day of the month following the sale. Their inventory cost did not include the tax. Under the new law, those individuals would have to pay the tax at the time of purchase, and carry the cost of the tax in inventory, if not for §54:39-121. This section allows a Distributor of Motor Fuels to make an election as to the timing of the remittance of the tax to the Supplier. Distributors who qualify for the election may delay remittance to their Supplier the amount of tax due until the 20th day of the month following the purchase. Elective Distributors must make remittances to their Suppliers by EFT to guarantee that the Supplier has funds to remit to New Jersey by the 22nd.

In order for a Distributor to qualify for the delayed remittance to its Suppliers, the Distributor must complete **Form DMF-2, Distributor's Application to Qualify for Delayed Remittances**. Upon approval, the Division of Taxation will issue a **Form DMF-3 Notice of Qualifying Elective Distributor**. If an Elective Distributor remits payment to its Suppliers late, the Elective Distributor is liable for all penalties and interest, and will lose its status as an Elective Distributor.

For fuel imported into the state, §54:39-118 allows Suppliers of Motor Fuels with terminals outside New Jersey to treat removals of fuel from those terminals as though they are removals from a terminal within the State. Thus, there is no need to maintain separate accounts for Distributors who pick up fuel from terminals on both sides of the

border. New Jersey is a small state with many terminals just over the State line, so this provision is very useful. In order to take advantage of this provision, Suppliers must complete and remit **Form SMF-2, Notice of Election to Pre-collect Motor Fuels Taxes from Out of State Terminals**.

Licensure

- **To apply for a new license,**
 - Individuals will complete and remit **Form MFA-1, Application for Motor Fuels License**. This form is used for any license desired.
 - Licenses are valid for a three year period or the unexpired portion thereof commencing on April 1 of the year the application is received and expiring on the third succeeding March 31, unless cancelled or revoked.
- **To renew a license:**
 - Licensees will complete and remit **Form MFA-1, Application for Motor Fuels License**. This form is used for any license.
 - The terms and fees for a renewed license are the same as those for the initial license.

Floorstocks Tax

On January 1, 2011, those formerly licensed as Seller / User of Special Fuels, Importers, Jobbers, etc will find themselves in possession of Motor Fuels that have not been taxed. This fuel will have already passed over the rack, and thus tax is due. §54:39-150 specifies how anyone with fuel in storage can pay the tax. Those with taxable fuel in storage must:

- Take an inventory on the close of business on December 31, 2010.
- Report the gallons held in storage on **Form MFA-10, Motor Fuels Floorstocks Report**, on or before January 31, 2011.
- Remit the tax due no later than July 1, 2011.

If a taxpayer remits the tax due on or before January 31, 2011, then that taxpayer may deduct 10% from the liability.

The Division of Taxation recognizes that the changes required may be difficult for some taxpayers to comply with. We are working to make the transition as smooth as possible. Please do not hesitate to email if you need assistance or clarification with any part of the new Motor Fuels Tax Act: fuel.tax@treas.state.nj.us