

supervise Volunteer Advocates to advocate on behalf of the institutionalized elderly 60 years of age and over.]

[(c)] (b) The [State Program Coordinator, under the direction and supervision of the] Ombudsperson, **through the Statewide Volunteer Coordinator**, shall coordinate the efforts of the Volunteer Advocate [program] **Program** for the Office with all relevant government agencies and with the administrators of such private facilities as may be deemed appropriate to ensure coordination and to avoid duplication of effort, so that the Volunteer **Advocate** Program will genuinely serve the interests of the institutionalized elderly without disrupting the legitimate function of any facility.

SUBCHAPTER 2. PROCEDURES REQUIRED PRIOR TO WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT FROM ELDERLY, INSTITUTIONALIZED RESIDENTS

[15A:3]17:39-2.1 Purpose

(a) The purpose of this subchapter is to clarify the Office’s role in circumstances involving proposals to withhold or to withdraw life-sustaining treatment **for** residents of facilities, pursuant to guidelines set forth by the New Jersey Supreme Court in the cases of *Matter of Farrell*, 108 N.J. 335 (1987), *Matter of Peter*, 108 N.J. 365 (1987), *Matter of Jobs*, 108 N.J. 394 (1987), and *Matter of Conroy*, 98 N.J. 321 (1985). The Office views its role as being [twofold] **two-fold**:

1. (No change.)

2. To assist the institutionalized elderly, their families and friends, **legal representative and legal guardians**, their healthcare providers, and the facilities in which they reside in making life-sustaining treatment decisions that fully express the wishes of the resident.

(b) Where there is no clear “duty to report” as outlined in N.J.A.C. [15A:3]17:39-2.3, the Office is available to provide technical support, assistance, and dispute resolution, should there be disagreement regarding the withholding or withdrawal of life-sustaining treatment, whether or not the resident has the capacity to make a healthcare decision, and whether or not an Advance Directive (“Living Will”) or Proxy Directive (“Durable Power of Attorney for Health Care” or **“Physician Orders for Life Sustaining Treatment”**) is involved. The Office’s function in any such situation is to promote, advocate, and ensure the rights of the institutionalized elderly resident, pursuant to New Jersey Supreme Court guidelines and the **guideposts set forth in the New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., and the Physician Orders for Life-Sustaining Treatment Act, N.J.S.A. 26:2H-129 et seq.**

[15A:3]17:39-2.2 Definitions

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

...
“Physician Orders for Life Sustaining Treatment (POLST) form” means a standardized form created under the authority of the New Jersey Department of Health, N.J.S.A. 26:2H-129 et seq., that sets forth a person’s wishes and preferences regarding life-sustaining treatment and is signed and dated by the person’s attending physician or advanced practice nurse thereby converting the person’s wishes and preferences into a medical order.

“Regional Long-Term Care Ethics Committee” means a group composed of healthcare and community members, who have participated in an Ombudsperson-approved training course, and acting under the auspices and with the approval of the Ombudsperson, provides education, policy development, and case consultation services to its [member] facilities, **residents, their family members, surrogate decision makers, managed care organizations representative, and managed care organizations case manager.**

[15A:3]17:39-2.3 Duty to report

(a) (No change.)

(b) Any caregiver, social worker, physician, registered or licensed practical nurse, **managed care organization representative, managed**

care organization care manager, or other professional who has reasonable cause to suspect that withholding or withdrawing life-sustaining treatment from an elderly, incapacitated resident of a facility would be an abuse of that resident shall report such information to the Office. **The Office may be contacted by calling its toll-free telephone number (877-582-6995), 24 hours per day, any day of the year, or by writing to: The Office of the Ombudsperson for the Institutionalized Elderly, PO Box 852, Trenton, New Jersey 08625-0852. OOIE is not a first responder. Individuals that require immediate attention in an emergency should call 911.**

(c) (No change.)

(d) The reporting procedures set forth in this section shall not apply when:

1.-2. (No change.)

3. The resident has a fully executed and valid Advance Directive (“Living Will”) [or] **under the provisions of N.J.S.A. 26:2H-53, Proxy Directive (“Durable Power of Attorney for Health Care”), or Physician Orders for Life Sustaining Treatment** under the provisions of N.J.S.A. 26:2H-[53]129 et seq.;

4.-6. (No change.)

[15A:3]17:39-2.4 Procedure for residents incapable of making healthcare decisions

(a) Unless one or more of the circumstances set forth in N.J.A.C. [15A:3]17:39-2.3(d) apply, the surrogate decision-maker for the resident shall notify the Office, in writing, of a contemplated decision to withhold or to withdraw life-sustaining treatment from the resident.

(b)-(d) (No change.)

(e) Concurrent with its intent inquiry, the Office shall engage the services of two physicians, unaffiliated with the facility and with the attending physician, to confirm the resident’s medical condition and prognosis.

1.-5. (No change.)

6. Each physician shall be compensated by one or more of the following:

i.-iv. (No change.)

v. Medicare or Medicaid; [and/or]

vi. Private insurance; and/or

[vi.] **vii.** (No change in text.)

(f)-(l) (No change.)

Recodify existing N.J.A.C. 15A:3-2.5 and 2.6 as **17:39-2.5 and 2.6** (No change in text.)

TREASURY — TAXATION

(a)

DIVISION OF TAXATION

Petroleum Products Gross Receipts Tax

Proposed Readoption with Amendments: N.J.A.C. 18:18A

Proposed New Rule: N.J.A.C. 18:18A-6.4

Proposed Repeals: N.J.A.C. 18:18A-2, 3.2, 3.3, 8.1, 8.3, and 18:18A Appendix

Authorized By: Michael Bryan, Director, Division of Taxation.

Authority: N.J.S.A. 54:15B-8.c and 54:50-1.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-205.

Submit written comments by January 30, 2015, to:

Mitchell C. Smith
 Administrative Practice Officer
 Division of Taxation
 50 Barrack Street
 P.O. Box 269
 Trenton, NJ 08695-0269

E-mail: TaxRuleMakingComments@treas.state.nj.us

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978) and N.J.S.A. 52:14B-5.1, N.J.A.C. 18:18A will expire on September 14, 2014. Pursuant to N.J.A.C. 1:30-6.4(g), the Division of Taxation (Division) timely filed this notice of readoption on Monday, September 15, 2014, therefore, pursuant to N.J.S.A. 52:14B-5.1.c(2), the expiration date is extended 180 days to March 13, 2015. The Division has reviewed these rules and, with the proposed amendments, repeals, and new rule, has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated.

The rules proposed for readoption with amendments, repeals, and new rule are intended to provide guidance to taxpayers subject to the provisions of the Petroleum Products Gross Receipts Tax Act (the Act), N.J.S.A. 54:15B-1 et seq. The rules describe the scope of the tax, the rate, and administrative procedures required for compliance with the Act.

The existing chapter is summarized as follows:

Subchapter 1 supplies the scope and definitions of the chapter.

Subchapter 2 supplies the rate of tax, and the imposition provisions for sales and imports of petroleum products.

Subchapter 3 supplies guidance on direct payment authority (whereby a permittee under certain circumstances may make the tax payment directly to the Director), procedures, and standards.

Subchapter 4 provides guidance concerning export transactions, standards, and accounting methods.

Subchapter 5 provides guidance for fuel oil and propane dealers.

Subchapter 6 provides guidance for certain companies engaged in blending petroleum products and for special industries, namely, marine vessels and aviation fuels.

Subchapter 7 provides administrative guidance for record retention, assessment, and refund periods.

Subchapter 8 provides guidance for dealing with filing dates.

The chapter Appendix contains certain forms and instructions.

The Division proposes to delete the parallel citations to P.L. 1990, c. 42, in N.J.A.C. 18:18A-1.1, Purpose and scope, and 1.2, Definitions, (definition of “Act”) because citations to the statutes are already included in each rule. N.J.A.C. 18:18A-1.2 is also amended to state that the definitions listed in N.J.A.C. 18:18A-1.2 are in addition to the statutory definitions set forth in N.J.S.A. 54:15B-2. The definitions of “commercial consumers” and “distributor” are proposed for deletion because those statutory terms were incorporated in the Petroleum Products Gross Receipts Tax rules due to references to the former tax on the sale of motor fuel. See N.J.S.A. 54:39-1 et seq. The former motor fuels tax law was repealed and replaced by the Motor Fuel Tax Act by P.L. 2010, c. 22, § 56, effective June 29, 2010, operative Jan. 1, 2011 (as amended by P.L. 2010, c. 79, § 29 to postpone original operative date). The definition of “book transfer” is proposed for amendment to add the words “all of” before “the following” to reinforce that all of the subparagraphs of the definition must be met to establish that a bona fide “book transfer” has occurred consistent with the requirements of the Petroleum Products Gross Receipts Tax Act. This definition is further proposed for amendment to delete two cross-references to “qualified distributor” in paragraph 2 of the definition because that term was also deleted by P.L. 2010, c. 22.

The definition of a “direct payment permit holder” is proposed for amendment to delete the statement that only certain taxpayers can receive a direct pay permit because that limited qualification is not required by the statute and also to make a minor grammatical correction. The definition of “first sale of petroleum products within this State” is proposed for amendment to delete the reference to “a distributor” because under the revised Motor Fuels Tax Act, N.J.S.A. 54:39-101 et seq., the supplier generally pays the tax before the motor fuel is sold to a distributor. This amendment is proposed solely in response to the change in the point of taxation to the supplier level from the distributor level, as a result of P.L. 2010, c. 22, and this amendment does not reflect any change in Division policy. The definition of “gross receipts” is amended to remove references that literally recite various portions of the Petroleum Products Gross Receipts statute, and references to tax years that are no

longer relevant or within the statute of limitations. Additionally, the definition of “gross receipts” is proposed for amendment to make grammatical changes to the co-generation exemption, other grammatical corrections, numbering changes, and to add a reference to N.J.S.A. 54:15B-2.1 and 2.2. The definition of “invoice” is proposed for amendment to add that “the amount of tax may be separately stated if that tax amount is known, or the amount of tax may be included in the receipt with a statement that the receipt includes New Jersey Petroleum Products Gross Receipts Tax. The definition of “invoice” is further proposed for amendment to delete the requirement that “such invoice shall be legibly written and shall be void if any correction or erasures shall appear on it” (in paragraph 6) because the provision is outdated, except where expressly required by statute.

The definition of “petroleum products” is proposed to be replaced to direct taxpayers to the statutory definition at N.J.S.A. 54:15B-2, thereby, deleting references to tax years that are no longer relevant or within the statute of limitations and deleting other references that only pertained to those years. A definition is proposed for “residential use” to describe the petroleum products transactions that are excluded from the tax under the “petroleum products” definition in N.J.S.A. 54:15B-2. The definition of “sale for exportation” is proposed for amendment to make a grammatical change and use plain language.

The Division proposes to repeal Subchapter 2, as N.J.A.C. 18:18A-2.1, Rate of tax, 2.2, Tax on imports, 2.3, Receipts from sales subject to tax, and 2.4, Imports, reiterate but do not explain or clarify provisions of the statute and contain information that is out of date.

The heading of Subchapter 3 is proposed for amendment to delete a reference to direct payments by distributors. N.J.A.C. 18:18A-3.1, Direct payment authority, is proposed for amendment to delete references to licensed distributors and commercial consumers, and to revise the section to reflect current law. As a matter of Division policy, licensed distributors and commercial consumers were permitted to make tax-free purchases of petroleum products under the prior Motor Fuels Tax law, N.J.S.A. 54:39-17 (repealed by P.L. 2010, c. 22) and under the Petroleum Products Gross Receipts Tax Act, N.J.S.A. 54:15B-12. The terms distributor and commercial consumer are proposed for deletion because a distributor or commercial consumer was the taxpayer under the prior law. However, the current Motor Fuel Tax Act, at N.J.S.A. 54:39-104, specifically references the new law where the supplier is the taxpayer. These amendments are proposed solely in response to the change in the point of taxation to the supplier level from the distributor level, as a result of P.L. 2010, c. 22, these amendments are necessary in order for the rules to be consistent with P.L. 2010, c. 22, and do not reflect any change in Division policy.

N.J.A.C. 18:18A-3.1 is further proposed for amendment to delete a reference to forms in the chapter Appendix dated 1990 and to remove examples. The Division proposes to repeal the chapter Appendix because all of the Agency’s forms are located on the Division’s website. The term “Direct payment certificate” is also proposed for amendment throughout the section to delete the word “certificate” because the document required by the section is referred to as a “direct payment permit.” Recodified N.J.A.C. 18:18A-3.1(a) is further proposed for amendment to delete the last sentence because the Director does not issue permits that are restricted to certain products.

N.J.A.C. 18:18A-3.2, Direct payment—nonprofit customer, is proposed for repeal because requiring contracts substantially in the form currently required by the section for non-profit customers is no longer necessary under modern business practices and the law does not require specific forms. N.J.A.C. 18:18A-3.3, Good faith; direct payment certificate, is proposed for repeal because demonstration of good faith in defense of a direct payment certificate is not required under the statute.

N.J.A.C. 18:18A-3.4, Permit application, is proposed for amendment to state that the permit application is prescribed by the Director and to delete the reference to forms and addresses that are contained in the chapter Appendix because the chapter Appendix is proposed for repeal, as discussed above. The section is also proposed for amendment to delete the term “direct payment certificate” and replace it with “the permit” because a direct payment certificate is not the proper term for the form used. The section was also amended to add a specific cross-reference to N.J.A.C. 18:18A-3.1. Finally, new subsection (b) is added to detail that

there is no fee for the permit application and to state the basic contents of the permit application.

N.J.A.C. 18:18A-4.1(a) is proposed for amendment to delete a reference to distributors and direct pay permit holders because the export exemption applies to any petroleum products purchase that is exported outside of New Jersey. At N.J.A.C. 18:18A-4.1(b), grammatical and company name changes to Example 1 are proposed. Example 3 is proposed for amendment because the customer did not indicate the percentage of the prior month's exports. Example 3 is further proposed for amendment to include suppliers because the hypothetical as written is in error on this point. The example is also proposed for amendment to be consistent with the current Motor Fuel Tax law, N.J.S.A. 54:39-101 et seq. and to delete the term "purchaser" and replace that term with "customer." Example 4 is proposed for deletion because that language is either redundant or no longer necessary.

N.J.A.C. 18:18A-5.1, Fuel oil dealers, is proposed for amendment to delete a reference to commercial use because the residential use exemption applicable to sales of No. 2, No. 4, or No. 6 fuel oil or kerosene does not apply to commercial use of such fuels. N.J.A.C. 18:18A-5.1 is further proposed for amendment to delete the terms "registration with and authorization" and "when registered" and replace those terms with "issuance of a direct payment permit" because certain fuel oil dealers are required to apply for a direct payment permit. N.J.A.C. 18:18A-5.1(b)1 is proposed for amendment to merge the paragraph into subsection (b), as the third sentence of the subsection. This subsection is further proposed for amendment to delete the term "selling price" of the petroleum product and replaced with the "number of gallons sold" because the tax rate set forth in the statute references gallons. N.J.A.C. 18:18A-5.1 is further proposed for amendment to delete the two examples because the first example is unnecessary as it does not explain why the taxable sales are 30 percent and the second example is incorrect because it references distributors under the prior Motor Fuels Tax law at N.J.S.A. 54:39-1 et seq., which was repealed by N.J.S.A. 54:39-101 et seq. These amendments are proposed solely in response to the change in the point of taxation to the supplier level from the distributor level, as a result of P.L. 2010, c. 22. These amendments are necessary in order for the rules to be consistent with P.L. 2010, c. 22, and do not reflect any change in Division policy.

N.J.A.C. 18:18A-5.2, Propane dealers, is proposed for amendment to delete a reference to commercial use, which is not exempt, delete references to "registration" and "registered" because certain propane dealers are required to apply for a direct payment permit, and to delete the example because it does not include enough information to be helpful. N.J.A.C. 18:18A-5.2(b) is proposed for deletion because it is confusing in this context. This section is further proposed for amendment to propose new subsections (b) and (c) to clarify that propane that is sold as a motor fuel is subject to tax at \$.04 a gallon and propane that is not sold as a motor fuel is subject to the 2½ percent tax rate. These amendments are proposed to clarify longstanding Division policies on the taxation of propane based upon the use of the propane and do not reflect any change in Division policy.

N.J.A.C. 18:18A-6.2, Fuels used by marine vessels, is proposed for amendment to delete a transitional reference that is no longer relevant.

N.J.A.C. 18:18A-6.3, Aviation fuels, is proposed for amendment to relocate subparagraph (a)2ii to subsection (a) and to delete the remainder of paragraph (a)1 and subsection (b), as the chart is no longer up to date.

Proposed new N.J.A.C. 18:18A-6.4, Recycled fuel and oil, clarifies the Division's longstanding position that recycled fuel and recycled oil are subject to tax under the Act because there is no statutory exemption for sales of recycled fuel or oil, and does not reflect any change in Division policy.

N.J.A.C. 18:18A-7.3, Refund claim, is proposed for amendment to correct a cross-reference and to delete "form PPG-5" and replace that with form "PPT-5," which is the correct form that is used to claim a credit. This section is also proposed for amendment to correct grammar.

N.J.A.C. 18:18A-8.1, Filing, is proposed for repeal because the due dates are in N.J.S.A. 54:15B-7.

N.J.A.C. 18:18A-8.3, Effective date, is proposed for repeal because that year is no longer relevant or within the statute of limitations.

N.J.A.C. 18:18A Appendix is proposed for repeal because all of the relevant forms are available on the Division's website.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments, repeals, and a new rule implement the Petroleum Products Gross Receipts Tax Act. The social impact of the rules is that they clarify and elaborate upon the Division's administration of the Act. The original Act imposed a 2½ percent tax on the gross receipts of a refiner, distributor, or importer of petroleum in the State. A later amendment provided for semi-annual conversion to a per gallon rate for fuel oils, aviation fuels, and motor fuels subject to tax under N.J.S.A. 54:15B-3. The conversion method was superseded by a statutory change to a constant per gallon rate for those fuels. The impact of the tax on the citizens of the State was mitigated through exemptions from the tax for home heating oil, fuels sold to governmental entities, and certain other petroleum products. Among other functions, the rules clarify how the imposition and exemption provisions of the Act apply under various circumstances. The proposed amendments, repeals, and new rule will have a beneficial impact by bringing the rules into conformity with current statutory provisions and by adding clarity through grammatical changes and the removal of outdated provisions. In addition, the updated rules will clearly set forth the Division's policies and provide for more efficient administration of the petroleum products gross receipts tax.

Economic Impact

The rules proposed for readoption with amendments, repeals, and a new rule are expected to have minimal economic impact because they primarily explain the basic requirements of the Act. It is hoped that the rules will have the effect of diminishing the administrative costs of compliance for taxpayers and the administrative costs of the Division. Revenues from the tax are credited to a special account in the General Fund and dedicated to the Transportation Trust Fund under the New Jersey Constitution, Article VIII, Section 2, Paragraph 4.

Federal Standards Statement

A Federal standards analysis is not required for the petroleum products gross receipts tax as there are no Federal requirements.

Jobs Impact

The rules proposed for readoption with amendments, repeals, and a new rule are not anticipated to have an independent effect on jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments, repeals, and a new rule is not anticipated to have any impact upon the agriculture industry because the rules proposed for readoption with amendments, repeals, and a new rule deal with the petroleum products gross receipts tax.

Regulatory Flexibility Statement

The rules proposed for readoption with amendments, repeals, and a new rule explain reporting and recordkeeping requirements with regard to the collection of the petroleum products gross receipts tax, pursuant to N.J.S.A. 54:15B-1 et seq. Some of the taxpayers or users may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirement to pay the petroleum products gross receipts tax was imposed by N.J.S.A. 54:15B-1 et seq. and the reporting and payment requirements are related to the tax itself. The Division anticipates that the rules proposed for readoption with amendments, repeals, and a new rule will not increase small businesses' capital costs or their need for certain professional services. No exemptions from, or differentiation in, these requirements on large or small businesses was provided, since to do so would not have been in compliance with the applicable statutes.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments, repeals, and a new rule will not result in a change in the average cost associated with

housing. The rules proposed for readoption with amendments, repeals, and a new rule would have no impact on any aspect of housing because the rules deal with the petroleum products gross receipts tax.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments, repeals, and a new rule will not result in a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. This is because the rules proposed for readoption with amendments, repeals, and a new rule have nothing to do with housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey. The rules proposed for readoption with amendments, repeals, and a new rule deal with the petroleum products gross receipts tax.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:18A.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 18:18A-2, 3.2, 3.3, 8.1, 8.3, and 18:18A Appendix.

Full text of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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] **any subsequent amendments**. 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[.]. **Additional words and terms are also set forth in the statute at N.J.S.A. 54:15B-2.**

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

...

"Book transfer" means:

1. An accounting procedure for simultaneously settling multiple petroleum delivery obligations in which **all of** the following occurs:
 - i.-v. (No change.)
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.

...

["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.]

...

"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.

...

["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).]

... "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]. **In addition to the exclusions set forth at N.J.S.A. 54:15B-2.1 and 2.2,** Gross receipts [shall] **do 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 generate 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.]

1. Consideration derived from sales to a company that has been issued an ST-5 exemption certificate by the Division of Taxation pursuant to the Sales and Use Tax Act, has a written contract with its vendor extending one year or longer, and has a written invoice to evidence the transaction;

2. Consideration derived from sales of petroleum products sold to the State of New Jersey, or any of its agencies, instrumentalities, public authorities, public corporations, political subdivisions, or school boards;

3. Consideration derived from the first sale of petroleum products to the United States Government, or to any of its departments, agencies, or instrumentalities for use in a Federal government function or operation;

4. Consideration derived from sales of petroleum products sold to the United Nations or any international organization of which the United States of America is a member;

5. The tax imposed under N.J.S.A. 54:15B-3; and

6. Sales of petroleum products used by a utility, a co-generation facility, or a wholesale generation facility to generate electricity for resale or to an end user, except if the end user is the facility used to generate the electricity or the end user is the owner of the property in which the co-generation facility is located or connected to.

“Invoice” means a document related to a sale showing:

1.-4. (No change.)

5. The price paid for the purchase of the product[;] and **the amount of tax may be separately stated if that amount is known, or the amount of tax may be included in the receipt with a statement that the receipt includes New Jersey Petroleum Products Gross Receipt Tax; 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, candles, animal feed, anti-freeze, ink, roofing shingles, and synthetic fibers.]

“Petroleum products” means products that are specified as petroleum products under N.J.S.A. 54:15B-2 and may also include certain finished manufactured products. The definition does not include certain finished manufactured products that may contain petroleum as an ingredient but are not themselves deemed petroleum products.

“Residential use” includes the use of No. 2, No. 4, or No. 6 fuel oil, kerosene, and propane in a residential building.

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

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. [DIRECT PAYMENTS BY DISTRIBUTORS AND] DIRECT PAYMENT TO PERMIT HOLDERS; CERTAIN EXEMPT SALES

18:18A-3.1 Direct [Payment Authority] payment authority

(a) Commercial consumers may, upon application to and approval by the Director, elect to be recognized as direct pay permit holders and pay directly to the Division the taxes imposed by the Act. Commercial consumers are deemed to include 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) and such other companies as may be licensed by the Director.]

(b) A distributor as herein defined or holder of a direct payment permit issued under these rules may, upon request, refer its seller to either a copy of its listing contained in the official listing of New Jersey Licensed Motor Fuel Distributors or issue a direct payment certificate, respectively.] A distributor may elect not to avail itself of its direct pay privilege. However, if it elects not to pay such tax directly to the Director such election is binding on all its transactions. It may not choose to be a direct payer for certain vendors. A [seller] **vendor** shall retain [such listing reference or] **a copy of its** direct payment [certificate] **permit** on file for the inspection of the Director [or his agents]. A direct payment [certificate] **permit**, properly executed by the [buyer] **purchaser**, once issued, shall remain valid unless voided by the Director. A company, [which is a distributor or the holder of a direct payment certificate] which receives **a copy of** a direct payment [certificate properly executed by] **permit from** the [buyer] **purchaser** shall maintain records in computerized format, or such other format as the Director shall authorize, identifying all sales to the [customer issuing] **purchaser providing** the [certificate] **permit** and attributable to the [certificate] **permit**. Such records [shall] **must** include date of sale, price, location of the transfer of the product, quantity of product, and type of product sold. Such supporting documentation [shall] **must** be made available to the Director [or his or her agents] upon request. A properly documented sale to the [issuer] **holder** of a valid direct payment [certificate or to a distributor] **permit** is not a first sale of petroleum products within this State [as defined in this chapter]. When the purchaser who [has issued such certificate] **holds a direct payment permit** in turn makes a sale of petroleum products delivered to a location in New Jersey and sells to a [buyer] **purchaser** which is not [a distributor or] the holder of a direct payment permit, the consideration from such sale results in gross receipts subject to tax, unless the sale otherwise qualifies for exemption, exclusion, or deduction (as a sale for exportation, for example). Such [seller] **vendor** must report and remit the tax to the Director in accordance with [these rules] **this chapter**. [The Director may issue direct payment permits which are restricted to the purchases of specified products.]

(c) The application for direct payment permit and the direct payment certificate shall be in the form found in Appendix I, incorporated herein by reference.

Example 1: Company T, a refiner and registered New Jersey distributor, sells 750,000 gallons of unleaded gasoline to Company J. While the gasoline is in the storage facility, Company J sells it to Company K, which in turn sells it to Company L, which in turn sells it to Company M. Companies J, K, and L are New Jersey registered distributors. Company M removes the gasoline from the terminal for use at its motor pool. Company L pays a tax on its gross receipts from its sale to Company M. Sales to J, K, and L are not subject to tax since they are sales to registered distributors, whose names are listed on the current Division official listing of licensed motor fuels distributors.

Example 2: Company A supplies a blender with blending naphthas. Company A may apply to the Division for a direct payment permit. In situations of this nature the Division generally will issue a direct payment permit.]

18:18A-3.2 and 3.3 (Reserved)

18:18A-3.4 Permit application

(a) A company seeking recognition as a direct payment permit holder shall file a completed application [(see Appendix I) at the following address: New Jersey Division of Taxation, 50 Barrack Street, CN 243, Trenton, NJ 08646] **as prescribed by the Director.** Following review by the Division, the applicant shall be issued a [Direct Payment Permit] **direct payment permit** or, if such permit is not issued, shall be advised of the reason(s) why not. A holder of a direct payment permit may issue [a direct payment certificate] **a copy of the permit** to its suppliers as provided for [in the rules] **at N.J.A.C. 18:18A-3.1.**

(b) **There is no fee to file the application required in (a) above and it is available at <http://www.state.nj.us/treasury/taxation/prntpetr.shtml>. The form requires the following:**

1. **General information about the business, including the company name, address, and contact information;**
2. **The personal information of the responsible parties/owners;**
3. **The activities of the business;**
4. **Whether the application is for a direct payment permit or only to register for the Petroleum Products Gross Receipts Tax; and**
5. **An affirmation that all information contained in the application is complete.**

SUBCHAPTER 4. EXPORT TRANSACTIONS; ACCOUNTING METHODS

18:18A-4.1 Export certificates

(a) A company making a purchase of petroleum products [from a distributor or other direct payment permit holder] for exportation from this State may issue a properly executed export certificate to a selling company evidencing a sale for exportation to a destination outside this State.

(b) (No change.)

Example 1: [Distributor X] **Company ABC (ABC)** makes sales of gasoline to [Whiz Bang Oil Company (WBOC)] **XYZ Enterprises (XYZ)**. [WBOC] **XYZ** delivers gasoline within and outside New Jersey. [X] **ABC** may set up two accounts for [WBOC] **XYZ**. Purchases charged to one account for fuel delivered to customers in New Jersey result in taxable gross receipts for [X] **ABC**. Sales to the second account (export account) for fuel delivered entirely outside New Jersey by [WBOC] **XYZ**, do not result in taxable gross receipts for [X] **ABC** provided **that XYZ has been issued** a proper export certificate [has been issued to it].

Example 2: (No change.)

Example 3: [Purchaser] **A customer** purchases motor oil from a New Jersey supplier, which is delivered to its warehouse in New Jersey. From the warehouse the motor oil is distributed to [purchaser's] **the customer's** stores in five other states [(the East Region)]. [In] **When** computing the portion of each delivery to the New Jersey warehouse on which the gross receipts tax should not be charged by the [manufacturer, a purchaser] **supplier, the customer** may [supply] **issue** the [manufacturer with] **supplier** an export certificate indicating the [percentage of the] prior month's warehouse shipments [which] **from the supplier that were subject to the petroleum products gross receipts tax and** were shipped [out of state] **out-of-State**. [Purchaser would] **The customer** maintains shipping reports to substantiate the [exempt

purchase. This method would enable suppliers to have and use actual rather than estimated figures for export compliance purposes, although figures submitted would be one month subsequent. The method would enable the Division auditors to audit based upon actual figures. The method may also be used quarterly where the customer's quarterly period ends in the months prior to the month when the reconciliation report is due] **exports.**

[Example 4: A utility company purchases fuel oil in New Jersey where it is temporarily stored. A pipeline connects the storage facility with the buyer's location outside the state where the utility burns the fuel. No tax is imposed upon receipts derived from the sale of fuel to the utility since the fuel is being used outside the State by the buyer. (See N.J.S.A. 54:15B-5).]

SUBCHAPTER 5. FUEL OIL AND PROPANE DEALERS

18:18A-5.1 Fuel oil dealers

(a) Companies in the business of selling No. 2, No. 4, or No. 6 fuel oil or kerosene for exempt use (such as residential use, nonprofit, or governmental use) [and for commercial use] shall apply to the Director for a direct payment permit, in accordance with N.J.A.C. 18:18A-3.4. Upon [registration with and authorization] **issuance of a direct payment permit** from the Director, such dealers shall report and pay directly to the Director the tax applicable on their gross receipts from taxable sales of such fuel oil or kerosene. Such companies[, when registered,] would qualify to purchase such fuel oil or kerosene in nontaxable transactions from registered sellers.

(b) Gross receipts from sales of No. 2, No. 4, or No. 6 fuel oil and kerosene for residential use are not subject to tax. If a company sells and dispenses fuel into a single tank [which] **that** operates a heating system of a building containing residential and commercial units, the entire sale shall result in gross receipts subject to tax unless the purchaser furnishes a certification, under oath, that a portion of the fuels purchased shall be used for nontaxable purposes. [1.] The taxable portion of the sale shall be computed by multiplying the total [selling price] **number of gallons sold** of the petroleum product by a fraction, the numerator of which shall be the number of square feet in the building which are devoted to office, retail, or other nonresidential use including stairwells and halls and denominator of which shall be the total number of square feet in the building.

[Example: A fuel oil dealer obtains a direct payment permit from the Director. In the past, 90 percent of his sales of No. 2 fuel oil were for residential use. This year the taxpayer obtains a new commercial account which produces additional gross sales receipts. Taxpayer now remits the gross receipt tax on 30 percent of his total receipts, which now include the receipts from his new account.

Example: Company T in New Jersey deals in gasoline and No. 2 fuel oil but is not a licensed distributor. Company T may obtain a direct payment permit for its sales of No. 2 fuel oil. Its purchases of gasoline, however, result in the taxable gross receipts to its seller.]

18:18A-5.2 Propane dealers

(a) Companies in the business of selling propane for exempt use (such as residential use, nonprofit, or governmental use) [and commercial use] shall apply to the Director for a direct payment permit. Upon [registration with and authorization] **issuance of a direct payment permit** from the Director, propane dealers shall be qualified to report and pay to the Director the tax applicable on their taxable receipts. Such companies[, once registered] would qualify to purchase propane in nontaxable transactions from registered sellers.

[(b) Gross receipts from sales of propane for residential use are not subject to tax.

Example: A fill station may register to pay the tax directly to the Division of Taxation. Its sales of propane for residential use are not subject to tax.]

(b) The tax rate for propane sold as a motor fuel is \$0.04 per gallon.

(c) The tax rate for propane that is not sold for use as a motor fuel is 2¼ percent upon the gross receipts.

SUBCHAPTER 6. BLENDING AND SPECIAL INDUSTRIES

18:18A-6.2 Fuels used by marine vessels

[On and after July 1, 1990 sales] **Sales** of petroleum products bunkered into marine vessels engaged in interstate or foreign commerce do not result in taxable gross receipts. Commercial fishing or shell fishing vessels are deemed to be vessels engaged in interstate commerce. Other vessels engaged in charter, sport fishing, or commercial party boat (head boat) fishing do not qualify for exempt purchases of fuel.

18:18A-6.3 Aviation fuels

[(a) On and after July 1, 1990 aviation] **Aviation** fuels used by common carriers in interstate or foreign commerce are not subject to tax except for the portion of the fuel used and consumed in New Jersey. **The portion of the fuel used and consumed in New Jersey includes all fuel consumed in a flight that originates and terminates in New Jersey.**

[1. Use and consumption of aviation fuels subject to tax under this subchapter shall mean the fuel consumed as follows:

i. For flights taking off from New Jersey and landing outside the state:
 (1) Fuel consumed in taxiing from the loading gate to the take-off area; and

(2) Fuel consumed in take-off. "Take-off" means the point the brake is released until such time as control of the flight transfers to New Jersey Air Route Traffic Control Center or other Regional Air Traffic Control Centers. The following chart indicates standard aircraft fuel consumption to be used in calculating fuel consumed under this subsection:

Aircraft Type	Taxi Fuel	Take-Off Fuel	Total Fuel
BAC-11	69	100	169
F-28	77	105	182
L-1011	252	475	727
SST	720	1360	2080
A-300	156	380	536
A-320	56	146	202
B707	234	390	624
B727	120	220	340
B737	89	140	229
B747	355	629	984
B757	136	230	366
B767	156	315	471
DC-8	216	260	476
DC-9	77	170	247
DC-10	198	500	698

ii. All fuel consumed in a flight that originates and terminates in New Jersey.

(b) Fuel used in aircraft descent and landing is not taxed except as it may be taxed under (a)1i(2) above.]

18:18A-6.4 Recycled fuel and oil

Sales of recycled fuel and recycled oil are considered to generate gross receipts subject to tax under the Act.

SUBCHAPTER 7. RECORDS, ASSESSMENTS, AND CLAIMS

18:18A-7.3 Refund claim

(a) A taxpayer may claim a refund of an overpayment of tax as provided in N.J.S.A. 54:49-14.a, or a refund of a payment of an additional tax assessment as provided in N.J.S.A. 54:49-14.b [or] **and** N.J.A.C. [18:5-5.5(c)1] **18:2-5.8(e)**.

(b) In a case where a company has erroneously paid a tax, before that company applies for a refund from the Division of Taxation, such company must seek a credit from its supplier. A refund claim should be filed only if a credit is not available from the supplier. If a refund claim by a company is made, it must contain the statement that the company has applied for and not been able to receive a credit from its supplier. Any credit or refund claimed by a supplier/taxpayer from the Division of

Taxation must contain the statement that an appropriate credit or refund has been given to its customer. The goal and purpose of this procedure is ease and efficiency of administration. [A form (PPG-5) has been created by the Division for use] **Form PPT-5 must be used** in connection with [certain] claims for credit under the Act **for an exempt use**.

Example: (No change.)

18:18A-8.1 (Reserved)

18:18A-8.3 (Reserved)

APPENDIX
(RESERVED)

OTHER AGENCIES

(a)

CASINO REINVESTMENT DEVELOPMENT AUTHORITY

Atlantic City Convention Center Authority

Proposed Readoption: N.J.A.C. 12A:130

Authorized By: Casino Reinvestment Development Authority, John F. Palmieri, Executive Director.

Authority: N.J.S.A. 5:12-144.1.j, 161.f, and 226; and 52:27H-40.a. Calendar Reference: See Summary below for explanation of exception to rulemaking calendar requirements of N.J.A.C. 1:30-3.3.

Proposal Number: PRN 2014-215.

Submit comments by January 30, 2015, to:

Paul G. Weiss, Esq., Chief Legal Officer
 Casino Reinvestment Development Authority
 15 South Pennsylvania Avenue
 Atlantic City, New Jersey 08401
 Fax: 609-347-0500
 E-mail: pweiss@njcrda.com.

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c(2), the Atlantic City Convention Center Authority rules at N.J.A.C. 12A:130 expire on April 28, 2015. The Casino Reinvestment Development Authority (CRDA), in accordance with the statutory power granted to the Authority pursuant to N.J.S.A. 5:12-226, which, among other things, transferred all of the powers, rights, assets, and duties of the Atlantic City Convention and Visitors Authority (convention center authority) to CRDA, created the Convention Center Division within CRDA, and transferred all rules and regulations of the convention center authority to CRDA, proposes to readopt the chapter without change.

CRDA pursuant to N.J.S.A. 5:12-226, in continuing the functions, contracts, obligations and duties of the Atlantic City Convention Center Authority, is authorized to act in its own name, in the name of the Convention Center Division, or in the name of the Atlantic City Convention Center Authority as may be convenient or advisable under the circumstances from time to time. Any references to the Convention Center Division or the Atlantic City Convention Center Authority in any law or regulation shall be deemed to refer and apply to the CRDA and/or the CRDA acting through its Convention Center Division.

The chapter governing the Atlantic City Convention and Visitors Authority, N.J.A.C. 12A:130, was adopted as R.1997 d.94, and became effective March 3, 1997. See 28 N.J.R. 5042(a) and 29 N.J.R. 778(a). The chapter was readopted, effective June 5, 2002, as R.2002 d.200. See 34 N.J.R. 818(a) and 2317(a). The chapter was again readopted, effective October 30, 2007, as R.2007 d.367. See 39 N.J.R. 2471(a) and 5087(a).

This notice of proposed readoption is designed to readopt all subchapters without amendment. An administrative review has been conducted, and a determination made, that all subchapters should be