SPONSOR: Rep. Osienski & Sen. Wilson & Rep. Hensley & Rep. Baumbach & Rep. Brady
Reps. Briggs King, Lynn, Jaques, Kowalko, Postles, Morris; Sen. Sokola

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 86
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO MOTOR FUEL TAX.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 51, Title 30 of the Delaware Code by making deletions as show by strike through and insertions as shown by underline as follows:

Subchapter IV. Aviation Jet Fuel.

§ 5171. Definitions.

As used in this subchapter:

(1) "Aviation jet fuel" means fuel designed for use in the operation of jet or turbo-prop aircraft, and sold or used for that purpose.

(2) "Licensed aviation jet fuel supplier" means any wholesale seller or distributor of aviation jet fuel that has procured a license from the Department.

§ 5172. Aviation jet fuel tax.

(a) A tax of 5 cents per gallon, computed in the same manner and subject to the same limitations as the tax rate established for gasoline in § 5110 of this title, is levied and imposed on the sale or delivery of aviation jet fuel by a licensed aviation jet fuel supplier. The tax attaches at the time of delivery and must be paid to the Department as provided in this subchapter.

(b) *Exemptions*. - The tax imposed by this subchapter does not apply to aviation jet fuel sold and delivered to and used by any of the following persons or for any of the following circumstances:

(1) The United States government, or any department, division, or agency of the United States government.

(2) The government of this State, or any political subdivision of this State.

(3) Aerial application uses within this State.

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(4) Purpose of economic development and job creation in the aviation industry in this State. A temporary exemption for a period of time not exceeding more than 5 years may be granted under this paragraph (b)(4) of this section. An exemption under this paragraph (b)(4) of this section must be approved by the Council on Development Finance and the Director of Small Business under §§ 8705A and 8707A of Title 29 and § 5178 of this title.

§ 5173. Jet fuel supplier's license; bond.

(a) *License required*. - It is unlawful for any person to act as an aviation jet fuel supplier in this State unless the person holds a valid aviation jet fuel supplier license issued by the Department.

(b) *Application*. - A person must apply and pay a $10 fee to the Department to obtain an aviation jet fuel supplier license.

(c) *Form of application*. - The application must be filed upon a form prepared and furnished by the Department. The application may contain such information as the Department deems necessary.

(d) *Bond*. -

(1)a. The Department may not issue an aviation jet fuel supplier license to any person, or continue in force an aviation jet fuel license issued to a person, unless the person has furnished a surety bond in such form and amount as the Department may require to secure compliance with this subchapter.

b. The Department may not require a surety bond of less than $5,000 or more than $200,000.

c. A bond filed with and approved by the Department remains in force and effect, without the necessity of periodic renewal, until such time as the aviation jet fuel supplier's license is revoked for cause, or otherwise cancelled or surrendered.

(2) The bond required under paragraph (d)(1) of this section must meet all of the following:

a. Be in a form approved by the Department.

b. Be executed by a surety company approved by the Department and duly licensed to do business under the laws of this State.

c. Be payable to the State.

d. Be conditioned upon the licensed aviation jet fuel supplier doing all of the following:

1. Promptly filing true reports with the Department.

2. Promptly paying to the Department all aviation jet fuel taxes levied or imposed by this State, together with all penalties or interest on the taxes.

3. Faithfully complying with the provisions of this subchapter.

(3)a. The Department may require the filing of a new bond in a similar amount if either of the following occur:

1. The liability upon the bond previously filed by a licensed aviation jet fuel supplier is discharged or reduced, whether by judgment rendered, payment made, or otherwise.

2. The Department determines that any surety on the bond previously filed becomes unsatisfactory or unacceptable.

b. The Department shall forthwith cancel a licensed aviation jet fuel supplier's license if the supplier does not provide a new bond when required under paragraph (d)(3)a. of this section.

c. If a licensed aviation jet fuel supplier provides a new bond under paragraph (d)(3)a. of this section, the Department shall cancel and surrender the supplier's previous bond and substitute the new bond for it. However, the Department may not cancel the previous bond if any liability that has accrued under the provisions of the previous bond are still outstanding.

(4)a. If the Department decides, after a hearing, that the amount of the existing bond is insufficient to ensure payment to the State of the amount of the tax and any penalties and interest for which a licensed aviation jet fuel supplier is or may become liable, then the supplier shall, forthwith upon the written demand of the Department, file an additional bond in the same manner and form with like security as provided under this subsection.

b. The Department shall provide a licensed aviation jet fuel supplier with 5 days notice in writing of any hearing to be held under paragraph (d)(4)a. of this section.

c. The total amount of an additional bond required under paragraph (d)(4)a. of this section, combined with the bond required under paragraph (d)(1) of this section, may not exceed the maximum of $200,000.

d. The Department shall forthwith cancel a licensed aviation jet fuel supplier's license if the supplier fails to file an additional bond under paragraph (d)(4)a. of this section.

(5)a. The Department shall release and discharge from liability to the State for a bond any surety on a bond furnished by a licensed aviation jet fuel supplier under this subsection if the surety mails a written request to the Department by certified mail, return receipt requested.

b. Upon receipt of a request under paragraph (d)(5)a. of this section, the Department shall forthwith acknowledge in writing the receipt of the request and shall thereafter inform the surety that it is released and discharged from any and all liability to the State accruing on such bond after the expiration of 60 days from the date on which the Department received the surety's request for release and discharge.

c. Simultaneously with the action under paragraph (d)(5)b. of this section, the Department shall notify the licensed aviation jet fuel supplier who furnished the bond of all of the following:

1. That the surety will be released and discharged from any and all liability on a certain date.

2. That unless the supplier, on or before the expiration of the 60 day period under paragraph (d)(5)b. of this section, files with the Department a new bond in the amount and form provided in this subsection, the Department will forthwith cancel the supplier's license.

(e) *Issuance of license*. -

(1) If a person files an application and bond in proper form, the Department shall issue an aviation jet fuel supplier license to the person unless any of the following apply:

a. The person formerly held any type of license before filing the application that was revoked for cause.

b. The person is filing the application as a subterfuge for the real party in interest who formerly held any type of license before filing the application that was revoked for cause.

c. The Department finds other sufficient cause to deny the license.

(2) Before the Department may refuse to issue a license under paragraph (e)(1) of this section, the Department must provide the person with a hearing. The Department shall grant the person at least 30 days written notice of the time and place of the hearing.

(f) *Term of license*. -

(1) An aviation jet fuel supplier license issued under this section expires on June 30 of each year.

(2) A licensed aviation jet fuel supplier that desires to remain licensed shall annually apply for a license.

(g) *Assignment forbidden*. - An aviation jet fuel supplier license is not transferable.

(h) *Revocation, cancellation, and surrender of license and bond*. —

(1) The Department may revoke a licensed aviation jet fuel supplier's license for reasonable cause.

(2) Before revoking a license under paragraph (h)(1) of this section, the Department shall notify the licensed aviation jet fuel supplier to show cause within 30 days of the date of the notice why the license should not be revoked.

(3) Notwithstanding paragraph (h)(2) of this section, the Department may, at any time before and pending a hearing under paragraph (h)(2) of this section, in the exercise of reasonable discretion, suspend a licensed aviation jet fuel supplier's license.

(4) The Department shall cancel any license to act as an aviation jet fuel supplier immediately upon the licensed aviation jet fuel supplier's surrender of the license.

§ 5174. Records.

(a) *Preparation of records*. - Each licensed aviation jet fuel supplier shall prepare and maintain such records as the Department reasonably requires with respect to all sales or deliveries of aviation jet fuel to customers.

(b) *Retention of records*. - The records required under this section must be retained for a minimum of 3 years and must be available, at all reasonable times, for examination by the Department's representatives.

§ 5175. Monthly reports and payments.

(a) *Reports*. –

(1) For the purpose of determining the amount of liability for the tax imposed under this subchapter, each licensed aviation jet fuel supplier shall file with the Department, on forms prescribed by the Department, a monthly tax report.

(2) The licensed aviation jet fuel supplier shall include in the report required under paragraph (a)(1) of this section a declaration that the statements contained in the report are true and are made under penalties of perjury. This declaration has the same force and effect as a verification of the report and is made in lieu of such verification.

(3) The report must include such information as the Department may reasonably require for the proper administration and enforcement of this subchapter.

(4) A licensed aviation jet fuel supplier shall file 1 report regardless of the number of locations at which the supplier's aviation jet fuel is stored or handled.

(b) *Due date*. –

(1) A licensed aviation jet fuel supplier shall file the report required under subsection (a) of this section and the tax due under subsection (d) of this section on or before the twenty-fifth day of the next succeeding calendar month following the monthly period to which it relates. If the twenty-fifth day of the month falls on a weekend or State holiday, the report is due on the State's next following business day.

(2) The report required under subsection (a) of this section and the tax due under subsection (d) of this section are considered to have been timely filed if the report or payment is postmarked by the United States Postal Service on or before the due date. The Secretary of the Department may, for good cause shown, grant a licensed aviation jet fuel supplier a reasonable extension of time.

(3) In lieu of depositing the payment covering the tax due under subsection (d) of this section in the United States mail, a licensed aviation jet fuel supplier may hand deliver the payment to the Department or the Department may require a licensed aviation jet fuel supplier to make electronic transfers of the payment to the appropriate State account.

(c) *Tax computation*. – A licensed aviation jet fuel supplier shall compute the tax imposed by this subchapter and include the tax in the price of the fuel. A licensed aviation jet fuel supplier shall compute the tax by multiplying the tax rate per gallon provided in this subchapter by the number of gallons of aviation jet fuel delivered to the customer.

(d) *Payments*. –

(1) A licensed aviation jet fuel supplier shall include a payment covering the tax due under this subchapter on aviation jet fuel, as computed in subsection (c) of this section, with the monthly tax report required under subsection (a) of this section.

(2)a. If a check received in payment of moneys due to the Department under this subchapter is returned to the Department by a licensed aviation jet fuel supplier's bank because of insufficient funds, a closed account, a stopped payment, or any other reason, the licensed aviation jet fuel supplier shall pay both of the following:

1. A service charge of $10.

2. Interest on the tax due at the rate of 1% per month, or fraction thereof, which accrues from the date the tax was due to be paid.

b. The Department shall send a statement to the licensed aviation jet fuel supplier demanding payment within 10 days of all of the following:

1. The original amount of the check.

2. The amounts required under paragraph (d)(2)a. of this section.

3. The cost of the postage incurred in mailing the statement.

c. A licensed aviation jet fuel supplier's failure to respond to the statement under paragraph (d)(2)b. of this section within 10 days constitutes cause for the Department to suspend the supplier's license. If the supplier does not make the payment required under paragraph (d)(2)b. of this section within 30 days after the Department suspends the supplier's license, the Department may revoke the supplier's license.

(e) *Refusal or failure to file report or pay tax when due*. –

(1) If a licensed aviation fuel supplier refuses or fails to file a report required under subsection (a) of this section within the time prescribed by subsection (b) of this section, the Department shall impose a penalty of $5.75 per business day of this State up to a maximum of $28.75 for each such report. For each report filed more than 5 business days late, the Department shall impose a penalty of $28.75 or 12% of the tax due, whichever is greater, for each such report.

(2) If a licensed aviation fuel supplier refuses or fails to pay the tax due under subsection (d) of this section within the time prescribed by subsection (b) of this section, the tax due bears interest at the rate of 1% per month, or fraction thereof, from the date the tax was due until the tax is paid in full.

(3) The Department may waive all or part of the penalties imposed by this subsection if a licensed aviation fuel supplier establishes by a preponderance of evidence that the supplier's failure to file the report or tax due within the time prescribed was due to reasonable cause and was not with intent to violate the law.

(f) *Deficiency*. - If the Department determines that the tax reported by a licensed aviation fuel supplier is deficient, the Department shall proceed to assess the deficiency on the basis of information available to the Department. In addition, the Department shall add to the deficiency interest at the rate of 1% per month, or fraction thereof, from the date the tax was due until the tax is paid in full.

(g) *Determination if no report is made*. –

(1) If any person liable for a report under this subchapter as an aviation jet fuel supplier, whether or not the person is a licensed aviation jet fuel supplier, fails, neglects, or refuses to file a report under subsection (a) of this section when the report is due, the Department shall, on the basis of information available to it, determine the tax liability of that person for the period during which no report was filed. In addition, the Department shall add to the tax determined to be due the penalty and interest provided for under subsection (e) of this section.

(2) An assessment made by the Department under this subsection or subsection (f) of this section is presumed to be correct. If a person questions the validity of the assessment, the person bears the burden to establish by a preponderance of evidence that the assessment is erroneous or excessive.

(h) *Fraudulent report*. - If a licensed aviation fuel supplier files a false or fraudulent report with intent to evade the tax imposed by this subchapter, the Department shall add to the amount of deficiency a penalty equal to 25% of the deficiency together with interest at 1% per month, or fraction thereof, on such deficiency from the date the tax was due until the tax is paid in full. The penalty imposed under this subsection is in addition to any other penalty prescribed by law.

(i) *Limitation*. - Except in the case of a false or fraudulent report or of neglect, failure, or refusal to make a report, the Department shall assess a deficiency under subsection (f) of this section within 1 of the following periods, whichever expires later:

(1) Three years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined.

(2) Three years after the report is filed.

(j) *Notification; redetermination; appeal*. –

(1) The Secretary of the Department shall, after determination of the amount of moneys due to the State under this subchapter for whatever reason, promptly notify by mail the person against whom the determination is made.

(2) A person against whom a determination was made under paragraph (j)(1) of this section may file a petition for redetermination of the assessment. The petition must be filed with the Secretary of the Department within 60 days of the date the determination under paragraph (j)(1) of this section was mailed.

(3) A petition for redetermination under paragraph (j)(2) of this section must state specifically the reasons the person believes the person is entitled to a redetermination.

(4) The Secretary of the Department shall dispose of a petition for redetermination under paragraph (j)(2) of this section within 90 days of the Secretary's receipt of it.

(5) The Secretary of the Department shall promptly notify a person who filed a petition for redetermination under paragraph (j)(2) of this section of the Secretary's decision.

(6) A person who filed a petition for redetermination under paragraph (j)(2) of this section may appeal the decision of the Secretary of the Department to the Superior Court. The person must file the appeal with the Superior Court within 60 days of the date of the Secretary's decision.

(*l*) *Collection of delinquent taxes*. –

(1) If a licensed aviation jet fuel supplier is, for a period in excess of 10 days, in default of payment of any taxes, penalties, or interest payable under this subchapter, the Department may issue a warrant under its official seal, signed by its Secretary, directed to the sheriff of any county of this State, commanding the sheriff to do all of the following:

a. Levy upon and sell the supplier's goods and chattels, without exemption, found within the sheriff's jurisdiction for payment of the amount of such delinquency together with any additional penalties and interest which have accrued and the cost of executing the warrant and conducting the sale.

b. Return the warrant to the Department and pay the Department the money collected by virtue of the warrant within the time specified in the warrant, which must be not less than 20 or more than 60 days from the date the warrant was issued.

(2) The sheriff to whom a warrant is directed under paragraph (*l*)(1) of this section shall proceed upon the warrant in all respects with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgments by a court of record. The sheriff is entitled to the same fees for services in executing the warrant to be collected in the same manner.

(3) Nothing in this subsection may be construed as forfeiting or waiving any rights of the Department or of this State to collect any tax payable under this subchapter by an action upon any bond that may be filed with the Department under any provision of this subchapter whether by suit or otherwise. If a suit, action, or other proceeding is instituted for the collection of any tax payable under this subchapter, the suit, action, or other proceeding may not be construed as waiving any other right provided by this subchapter.

§ 5176. Refund of taxes, fees, penalties, or interest erroneously or illegally collected.

(a) If any taxes, fees, penalties, or interest imposed under this subchapter have been erroneously or illegally collected from a licensed aviation jet fuel supplier, the Department may do 1 of the following:

(1) Permit the supplier to take credit against a subsequent tax report for the amount of the erroneous or illegal overpayment.

(2) Certify the amount due to the supplier to the Secretary of the Department, who shall then draw a warrant for the certified amount to the supplier.

(b) A refund due to a licensed aviation jet fuel supplier under paragraph (a)(2) of this section must be paid to the supplier forthwith.

(c) A licensed aviation jet fuel supplier must file a written claim with the Department to receive a refund of any taxes, fees, penalties, or interest imposed under this subchapter. The written claim must be filed with the Department before the expiration of 1 year from the earlier of 1 of the following:

(1) The date of the payment.

(2) The date the payment was required to be made.

(d) The written claim under subsection (c) of this section must be in such form prescribed by the Department and must specifically set forth the circumstances entitling the licensed aviation jet fuel supplier to the refund.

§ 5177. Administration.

(a) *Rules and regulations*. - The Department shall enforce this subchapter, and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement of this subchapter.

(b) *Examination of records*. - The Department may examine the records of licensed aviation jet fuel suppliers and make such other investigations as it may deem necessary in the administration and enforcement of this subchapter.

(c) *Presumption*. - For the purpose of enforcing this subchapter, it is prima facie presumed that all aviation jet fuel received by any person into storage having dispensing equipment designed to fuel jet or turbo-prop aircraft is to be transferred or delivered by that person into the fuel supply tanks of jet or turbo-prop aircraft.

(d) *Reciprocal exchange of data*. - The Department shall, upon request from the officials to whom are entrusted the enforcement of aviation jet fuel tax law of any other state; the District of Columbia; the United States, its territories, and possessions; or the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the delivery of aviation jet fuel by a licensed aviation jet fuel supplier, provided such other state; the District of Columbia; the United States, its territories, and possessions; or the provinces of the Dominion of Canada furnish like information to this State.

(e) *Records open to public*. - Reports required by this subchapter, exclusive of schedules, itemized statements, and other supporting evidence annexed to the report, must at all reasonable times be open to the public.

§ 5178. Procedure for exempt sales of aviation jet fuel.

(a) A sale made to an entity exempt from taxation under § 5172(b) of this title must be documented as part of the reporting and payment procedures in § 5175 of this title.

(b) All of the following must be included in the documentation required under subsection (a) of this section:

(1) The quantity of aviation jet fuel delivered to an entity exempt from taxation under § 5172(b) of this section.

(2) The date the aviation jet fuel was delivered.

(3) To whom the aviation jet fuel was delivered.

(4) Any other information required by the Department.

(c) The information required under subsection (b) of this section must be accompanied by the original invoice showing the purchase, together with evidence that the aviation jet fuel was delivered to an entity exempt from taxation under § 5172(b) of this title.

§ 5179. Violations; penalties; enforcement.

(a) *Acts forbidden*. - It is unlawful for a person to do any of the following:

(1) Refuse or knowingly and intentionally fail to make and file any statement required by this subchapter in the manner or within the time required.

(2) Knowingly and with intent to evade or to aid in the evasion of the tax imposed under this subchapter make any false statement or conceal any material fact in any record, report, or affidavit provided for in this subchapter.

(3) Knowingly and with intent to evade or to aid in the evasion of the tax imposed under this subchapter, or to withhold or fail to remit moneys due under this subchapter.

(4) Assign or attempt to assign a license to act as an aviation jet fuel supplier.

(5) Knowingly and with intent to evade or to aid in the evasion of the tax imposed under this subchapter receive aviation jet fuel in this State into the supply tank or tanks from a person not holding a valid license as an aviation jet fuel supplier.

(6) Fail to keep and maintain the books and records required by this subchapter.

(7) Knowingly and with intent to deceive, defraud, or evade the tax imposed under this subchapter permanently remove, replace, alter, or render inoperable any volumetric measuring device or "totalizer" of any pump dispensing aviation jet fuel subject to this subchapter.

(8) Sign and deliver or cause to be delivered to the Motor Fuel Tax Administration any report required by this subchapter knowing that it contains false statements material to the computation of the tax imposed by this subchapter.

(b) *Penalties*. –

(1) Except as provided in paragraph (b)(2) of this section, a violation of subsection (a) of this section is a class A misdemeanor.

(2)a. If a violation of subsection (a) of this section results in an evasion or wrongful withholding of aviation jet fuel tax amounting to more than $500, the violation is a class E felony.

b. If a person has been convicted of a violation of subsection (a) of this section and is subsequently convicted of a violation of subsection (a) of this section, the subsequent violation is a class E felony.

(c) *Penalties are cumulative*. - The fine and imprisonment provided for in this section are in addition to any other penalty imposed by any other provision of this subchapter.

(d) *Enforcement*. - The Delaware State Police is authorized and directed to assist in the enforcement of this section.

(e) *License required*. –

(1) It is unlawful for a person to conduct any activities requiring a license under this subchapter without a license or after a license has been surrendered, cancelled, or revoked.

(2) A violation of this subsection is punishable as follows:

a. For a first offense, by a fine not less than $100 nor more than $300.

b. For each subsequent offense, by a fine not less than $300 nor more than $500.

(f) *Jurisdiction*. – The Superior Court has exclusive jurisdiction over a violation of this section.

§ 5180. Deposit of aviation jet fuel tax proceeds.

(a) The Department shall deposit all aviation jet fuel tax collected under this subchapter to the credit of the Transportation Trust Fund, established in Title 2, for the purpose of supporting the Department's responsibilities concerning aviation in this State.

(b) The Department shall file a report with the Controller General by September 1 of each year detailing the revenue received under this subchapter and the expenditures associated with the Department's responsibilities concerning aviation in this State.

Section 2. This Act takes effect on July 1, 2019.