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HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 10

AN ACT TO AMEND TITLE 30 OF THE DELAWARE CODE RELATING TO MANUFACTURERS AND WHOLESALEERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend §2010(3)b., Title 30 of the Delaware Code by striking the words, numbers and punctuation
2 “§2901(11)” and substituting in lieu thereof the words, numbers and punctuation “§2901(20)”.

3 Section 2. Amend §2011(k)(2), Title 30 of the Delaware Code by striking the words, numbers and punctuation
4 “§2901(11)a.” and substituting in lieu thereof the words, numbers and punctuation “§2901(20)a.”.

5 Section 3. Amend §2020(4), Title 30 of the Delaware Code by striking the words, numbers and punctuation
6 “§2901(8)” and substituting in lieu thereof the words, numbers and punctuation “§2901(17)”.

7 Section 4. Amend §2701(1), Title 30 of the Delaware Code by inserting in the second sentence after the word
8 “include” and before the word “proceeds” the following words, numbers and punctuation: “(a) proceeds received by a
9 petroleum product refiner (as defined in §2901(12) of this title) from sales of intermediate petroleum products (as defined
10 in §2901(8) of this title) to an intermediate petroleum products wholesaler (as defined in §2901(9) of this title) or (b)”.

11 Section 5. Amend §2901, Title 30 of the Delaware Code as follows:

12 (a) Redesignate existing subsection (2) as subsection (3) and add a new subsection (2) as follows:

13 “(2) ‘Crude oil wholesaler’ means every person engaged, as owner or agent, in the business of selling to
14 or exchanging with a petroleum product refiner crude oil for cash or barter or any consideration for the
15 purpose of refining and resale by the petroleum product refiner, and includes without limitation crude oil
16 sold or exchanged through pipelines, warehouses or other storage facilities and distribution depots of
17 persons whose principal place of business is located inside or outside this State.”

18 (b) Redesignate existing subsection (3) as subsection (6) and add new subsections (4) and (5) as follows:

19 “(4) ‘Finished petroleum products’ means one or more petroleum products that have been refined by a
20 petroleum product refiner and that are of a type offered for sale by a petroleum product refiner to its
21 customers in the ordinary course of business, including, but not limited to asphalt, distillate fuel oil
22 (including all grades of diesel fuel and fuel oils), finished aviation gasoline, finished motor gasoline,
23 kerosene, jet fuel (both kerosene-type and naphtha-type jet fuel), naphthas of all boiling ranges, other oils
24 with boiling range equal to or greater than 401 degrees Fahrenheit, petrochemical feed stocks, petroleum
25 coke, residual fuel oils, road oils, still gas, wax and other miscellaneous petroleum products, including,
26 but not limited to petrolatum, lube refining by products, absorption oils, ram-jet fuel, petroleum rocket
27 fuels, synthetic natural gas feed stocks and specialty oils.

28 (5) ‘Finished petroleum products wholesaler’ means every person engaged, as owner or agent, in the
29 business of buying from a petroleum product refiner finished petroleum products for cash or barter or any
30 consideration for the purpose of further resale by the finished petroleum products wholesaler to a
31 wholesaler, and includes without limitation finished petroleum products sold or exchanged through
32 pipelines, warehouses or other storage facilities and distribution depots of persons whose principal place
33 of business is located inside or outside this State.”.

34 (c) Redesignate existing subsection (4) as subsection (7) and amend such subsection by renumbering existing
35 subparagraphs 8. and 9. in paragraph b. as subparagraphs 13 and 14 and by adding to paragraph b. new subparagraphs 8.,
36 9., 10., 11. and 12. as follows:

37 “8. Receipts derived by a crude oil wholesaler from the sale of crude oil to a petroleum product refiner;

38 9. Receipts derived by a petroleum product refiner from the sale of intermediate petroleum products to
39 an intermediate petroleum products wholesaler;

40 10. Receipts derived by an intermediate petroleum products wholesaler from the sale of intermediate
41 petroleum products to a petroleum product refiner;

42 11. Receipts derived by a petroleum product refiner from the sale of finished petroleum products to a
43 finished petroleum products wholesaler;

44 12. Receipts derived by a finished petroleum products wholesaler from the sale of finished petroleum
45 products to a wholesaler; provided that the finished petroleum products wholesaler and the wholesaler
46 stand in a control relationship. For purposes of the proceeding sentence a ‘control relationship’ means
47 that the finished petroleum products wholesaler directly or indirectly controls the wholesaler, the
48 wholesaler directly or indirectly controls the finished petroleum products wholesaler or the finished

petroleum products wholesaler and the wholesaler are directly or indirectly controlled by the same person. For purposes of the preceding sentence 'controls' shall mean the direct or indirect ownership by one person of one hundred percent of the stock or ownership interest in another person;”.

(d) Redesignate existing subsection (5) as subsection (10) and add new subsections (8) and (9) as follows:

“(8) ‘Intermediate petroleum products’ means one or more petroleum products that have been partially refined by a petroleum product refiner.

(9) ‘Intermediate petroleum products wholesaler’ means every person engaged, as owner or agent, in the business of selling to or exchanging with a petroleum product refiner intermediate petroleum products for cash or barter or any consideration for the purpose of further refining or resale by the petroleum product refiner, and includes without limitation intermediate petroleum products sold or exchanged through pipelines, warehouses or other storage facilities and distribution depots of persons whose principal place of business is located inside or outside this State.”.

(e) Redesignate existing subsections (6) and (7) as subsections (11) and (13) and add a new subsection (12) as follows:

“(12) ‘Petroleum product refiner’ means any person engaged in the operation of a petroleum product refinery in this State, the principal raw material for which, measured by volume, consists of crude oil.”.

(f) Redesignate existing subsections (8) through (14) as subsections (14) through (20) and amend redesignated subsection (17) by striking the words, numbers and punctuation “paragraph (14)a.6.” as it appears therein and substituting in lieu thereof the words, numbers and punctuation “paragraph (20)a.6.”.

Section 6. Amend §2902, Title 30 of the Delaware Code as follows:

(a) Amend subsection (a) by striking the words, numbers and punctuation “§2901(14)a.2. and 3.” and substituting in lieu thereof the words, numbers and punctuation “§2901(20)a.2. and 3.”.

(b) Amend subsection (c)(3) by striking the words, numbers and punctuation “§2901(6)” and substituting in lieu thereof the words, numbers and punctuation “§2901(11)”.

(c) Amend subsection (c)(6) by striking the words, numbers and punctuation “§2901(4)b.6.” and substituting in lieu thereof the words, numbers and punctuation “§2901(7)b.6.”.

Section 7. Amend §2903(a), Title 30 of the Delaware Code by striking the words, numbers and punctuation “§2901(14)a.2.” and substituting in lieu thereof the words, numbers and punctuation “§2901(20)a.2.”.

Section 8. Amend §2904(a), Title 30 of the Delaware Code by striking the words, numbers and punctuation “§2901(14)a.3.” and substituting in lieu thereof the words, numbers and punctuation “§2901(20)a.3.”.

79 Section 9. Amend §2910(c), Title 30 of the Delaware Code by striking the words, numbers and punctuation
80 “§2901(11)” and substituting in lieu thereof the words, numbers and punctuation “§2901(17)”.

81 Section 10. Amend §2912(c)(3), Title 30 of the Delaware Code by striking the words, numbers and punctuation
82 “§2901(11)” and substituting in lieu thereof the words, numbers and punctuation “§2901(17)”.

83 Section 11. Amend §5506(a), Title 30 of the Delaware Code by striking the words, numbers and punctuation
84 “§2901(14)” and substituting in lieu thereof the words, numbers and punctuation “§2901(20)”.

85 Section 12. In addition to the general power of the Director under subsection 563(b) of title 30 of the Delaware
86 Code to prescribe the form and contents of any return or other document required to be filed under title 30 of the Delaware
87 Code, the Director of Revenue shall have the authority to prescribe the form and contents of any return or other document
88 deemed necessary to enforce or monitor the effect of amendments made by this Act, including, without limitation,
89 information returns or other reports to be made by persons engaging in transactions, the gross receipts from which are
90 excluded from gross receipts subject to tax under chapter 29 of the Delaware Code.

91 Section 13. If any provision of this Act or the application thereof to any person or circumstance is held invalid,
92 such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid
93 provision or application, and to that end the provisions of this Act are declared to be severable.

94 Section 14. This Act shall become effective for taxable periods beginning after the date of enactment.

SYNOPSIS

This Act exempts from the Wholesale Merchants' Gross Receipts Tax and from the Manufacturers' Gross Receipts Tax the gross receipts realized in certain intermediate transactions engaged in by petroleum product refiners with certain specialized trade parties during the petroleum refining process. The Act exempts from the Wholesale Merchants' Gross Receipts Tax the gross receipts from (i) sales of crude oil by a crude oil wholesaler to a petroleum product refiner, (ii) sales of intermediate petroleum products that have been partially refined by a petroleum product refiner to an intermediate petroleum products wholesaler and from an intermediate petroleum products wholesaler back to a petroleum product refiner, (iii) sales of finished petroleum products by a petroleum product refiner to a finished petroleum products wholesaler, and (iv) sales of finished petroleum products by a finished petroleum products wholesaler to a wholesaler, if the finished petroleum products wholesaler and the wholesaler stand in a control relationship, i.e., one owns, directly or indirectly, 100% of the other or a third party owns, directly or indirectly, 100% of both the finished petroleum products wholesaler and the wholesaler. Proceeds from sales of a petroleum product refiner to an intermediate petroleum products wholesaler are similarly exempted from the Manufacturers' Gross Receipts Tax. It is anticipated that these changes will not cause a decrease in the Wholesale Merchants' Gross Receipts Tax or the Manufacturers' Gross Receipts Tax.