

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1667 Session of
1981

INTRODUCED BY WILSON, CORNELL, POTT, LUCYK AND McVERRY, JUNE 17,
1981

REFERRED TO COMMITTEE ON FINANCE, JUNE 17, 1981

AN ACT

1 Amending the act of January 14, 1952 (1951 P.L.1965, No.550),
2 entitled, as amended, "An act imposing a permanent and a
3 temporary State tax on fuels used within the Commonwealth in
4 internal combustion engines for the generation of power to
5 propel motor vehicles using the public highways; imposing a
6 permanent tax on the fuels used in aircraft or aircraft
7 engines; providing for the collection and lien of the tax and
8 the distribution and use of the proceeds thereof; requiring
9 dealer-users to secure licenses and to file bonds as a
10 guarantee of payment of taxes, penalties, interest, fines,
11 uncollectible check fees and Attorney General's fees, to file
12 reports and to compile and retain certain records; requiring
13 registration of carriers for hire; imposing duties on such
14 persons; requiring persons selling or delivering fuels to
15 licensed dealer-users to furnish information; imposing
16 certain costs on counties; conferring powers and imposing
17 duties on State officers and departments; providing for
18 refunds of taxes, penalties and interest illegally or
19 erroneously collected from licensees; and providing
20 penalties," redefining the word "use"; further providing for
21 bonds, the imposition and payment of the tax annual license
22 fees and the retention of records; imposing limitations and
23 providing for enforcement and rewards.

24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:

26 Section 1. The definition of "use" in section 2, act of
27 January 14, 1952 (1951 P.L.1965, No.550), known as the "Fuel Use
28 Tax Act," amended May 28, 1956 (1955 P.L.1782, No.595), is

1 amended to read:

2 Section 2. Definitions.--The following words, terms and
3 phrases when used in this act shall have the meanings ascribed
4 to them in this section, except in those instances where the
5 context clearly indicates a different meaning.

6 * * *

7 "Use" shall mean and include (a) [the importation into this
8 Commonwealth of fuels in the fuel supply tanks or other fueling
9 receptacles or devices of a motor vehicle in excess of fifty
10 (50) gallons,] the exercise of any right or power of ownership,
11 custody or possession of any fuel within the Commonwealth, and
12 shall include but not be limited to the transportation, storage
13 or consumption thereof and (b) the delivery or placing of fuels
14 into the fuel supply tanks or other fueling receptacles or
15 devices of an aircraft or aircraft engine or of a motor vehicle
16 in this Commonwealth for use in whole or part for the generation
17 of power in the aircraft or aircraft engine or in whole or in
18 part for the generation of power to propel such motor vehicle on
19 the public highways of this Commonwealth. The delivery of fuels
20 into such supply tanks or other fueling receptacles or devices
21 shall constitute a conclusive presumption that the fuel so
22 delivered is to be used in propelling such motor vehicles on the
23 public highways of this Commonwealth or for the generation of
24 power in aircraft or aircraft engines.

25 Section 2. Subsection (e) of section 3 of the act is amended
26 to read:

27 Section 3. Application for License; Licensing of Dealer-
28 Users; Bond or Deposit of Collateral Securities.--* * *

29 (e) Any person required by the provisions of this section to
30 file a surety bond may, in lieu thereof, deposit with the State

1 Treasurer negotiable or assigned bonds which are direct
2 obligations of the United States Government or of the
3 Commonwealth of Pennsylvania, the [par] fair market value
4 thereof to be of the amount of the surety bond required of such
5 person, as collateral guarantee of payment of all liabilities
6 accruing under the provisions of this act, or in the discretion
7 of the secretary securities acceptable to him including but not
8 limited to bank accounts to which only the department has
9 access, irrevocable letters of credit and stocks and bonds with
10 the established market value thereof to be of the surety bond
11 required of such persons. The State Treasurer shall issue to
12 such person and to the Department of Revenue a certificate of
13 such deposit. The said securities shall be retained by the State
14 Treasurer after the termination of the license of such person,
15 whether by his own act or the action of the department, and such
16 securities shall not be released from any liability to the
17 Commonwealth already accrued or which shall accrue prior to the
18 issuance of certification by the department that all fuel taxes,
19 penalties, interest, fees, fines, uncollectible check fees and
20 Attorney General's fee have been paid. The department shall
21 furnish the State Treasurer with a copy of such certification
22 and authorize the return of said securities by the State
23 Treasurer to the owner. Interest accrued of such accounts shall
24 be maintained in the account of the taxpayer and shall
25 periodically be paid to the taxpayer if all claims of the
26 Commonwealth have been satisfied.

27 * * *

28 Section 3. Section 4 of the act, amended December 19, 1975
29 (P.L.558, No.157), is amended to read:

30 Section 4. Imposition of Tax Exemptions.--A permanent excise

1 tax at the rate [of eight cents (8¢) a] per gallon or fractional
2 part thereof imposed by the act of May 21, 1931 (P.L.149,
3 No.105), known as "The Liquid Fuels Tax Act," is hereby imposed
4 on all dealer-users upon the use of fuel within this
5 Commonwealth, except the use of fuel in aircraft or aircraft
6 engines, to be computed in the manner hereinafter set forth. The
7 tax herein imposed shall not apply on fuels not within the
8 taxing power of this Commonwealth under the Commerce Clause of
9 the Constitution of the United States. The tax herein imposed
10 and assessed shall be paid to the Commonwealth but once in
11 respect to any fuels used within the Commonwealth. No tax is
12 hereby imposed upon (1) any fuel that is used by or sold and
13 delivered to the United States government, when such sales and
14 deliveries are supported by documentary evidence satisfactory to
15 the department, or (2) upon any fuel not in excess of fifty (50)
16 gallons brought into this Commonwealth in the fuel supply tanks
17 or other fueling receptacles or devices of a motor vehicle, or
18 (3) upon any fuel used by or sold or delivered for use in farm
19 machinery or equipment, engaged in the production or harvesting
20 of farm or agricultural products involving the use of the public
21 highways within a ten (10) mile radius of the domicile of the
22 owner of the machinery or equipment, when such sales and
23 deliveries are supported by documentary evidence satisfactory to
24 the department, or (4) upon any fuel used by or sold or
25 delivered to the Commonwealth of Pennsylvania, its political
26 subdivisions, any volunteer fire company, any volunteer
27 ambulance service, any volunteer rescue squad, any second class
28 county port authority and any nonpublic schools not operated for
29 profit, when such sales and deliveries are supported by
30 documentary evidence satisfactory to the department.

1 In lieu of the foregoing taxes, a permanent excise tax at the
2 rate of one and one-half cents a gallon, or fractional part
3 thereof, is hereby imposed on all dealer-users upon the use of
4 fuel in propeller-driven piston engine aircraft or aircraft
5 engines, and except as hereinafter provided, one and one-half
6 cents a gallon or fractional part thereof of fuel used in
7 turbine propeller jet, turbo-jet, or jet driven aircraft or
8 aircraft engines, to be computed in the manner hereinafter set
9 forth. Beginning January 1, 1960, and thereafter, a State tax of
10 one cent a gallon, or fractional part thereof, is hereby imposed
11 and assessed upon all liquid fuels used or sold and delivered by
12 distributors within this Commonwealth for use as fuel in turbine
13 propeller jet, turbo-jet, or jet driven aircraft and aircraft
14 engines. The tax herein imposed shall not apply on fuels not
15 within the taxing power of this Commonwealth under The Commerce
16 Clause of the Constitution of the United States. The tax herein
17 imposed and assessed shall be paid to the Commonwealth but once
18 in respect to any fuels. No tax is hereby imposed upon (1) any
19 fuel that is used by or sold and delivered to the United States
20 government when such sales and deliveries are supported by
21 documentary evidence satisfactory to the department, or (2) upon
22 any fuel brought into this Commonwealth in the fuel supply tanks
23 or other fueling receptacles or devices of an aircraft or
24 aircraft engine, or (3) upon any fuel used or sold or delivered
25 to the Commonwealth of Pennsylvania, its political subdivisions,
26 any volunteer fire company, any volunteer ambulance service, any
27 volunteer rescue squad, any second class county port authority
28 and nonpublic schools not operated for profit, for official use
29 when such sales and deliveries are supported by documentary
30 evidence satisfactory to the department.

1 [The Pennsylvania Aeronautics Commission is authorized to
2 make allocations of taxes collected under this act to airports
3 in proportion to the average of their allocations received from
4 the Pennsylvania Aeronautics Commission during the period for
5 which they have received such allocations not to exceed five (5)
6 years or, in the case of airports having no such allocation
7 experience, in equal proportion with other airports based upon
8 comparative collections under this tax.]

9 Section 4. The act is amended by adding sections to read:

10 Section 4.1. Annual License Fee for Noncommercially Used
11 Lightweight Vehicles Powered by Diesel Fuels.--An annual license
12 fee in lieu of the tax imposed by section 4 of this act and
13 related reporting requirements may be imposed by the department
14 upon the use of diesel fuel, which is used in certain motor
15 vehicles, in accordance with the following schedule:

<u>Weight in Pounds</u>	<u>Fee</u>
<u>5,000 or less</u>	<u>\$ 75</u>
<u>5,001 to 7,000</u>	<u>\$100</u>
<u>7,001 to 9,000</u>	<u>\$125</u>
<u>9,001 to 11,000</u>	<u>\$150</u>
<u>11,001 to 14,000</u>	<u>\$175</u>
<u>14,001 to 17,000</u>	<u>\$200</u>

23 The department shall by rules and regulations provide for the
24 issuance of such licenses.

25 Section 4.2. Annual License Fee for Propane Powered
26 Vehicles.--An annual licensee fee in lieu of the tax imposed by
27 section 4 of this act and related reporting requirements may be
28 imposed by the department upon the use of liquefied petroleum
29 gas, commonly called propane, which is used in motor vehicles in
30 accordance with the following schedule:

	<u>Weight in Pounds</u>	<u>Fee</u>
1		
2	<u>5,000 or less</u>	<u>\$ 100</u>
3	<u>5,001 to 7,000</u>	<u>\$ 150</u>
4	<u>7,001 to 9,000</u>	<u>\$ 200</u>
5	<u>9,001 to 11,000</u>	<u>\$ 250</u>
6	<u>11,001 to 14,000</u>	<u>\$ 300</u>
7	<u>14,001 to 17,000</u>	<u>\$ 350</u>
8	<u>17,001 to 21,000</u>	<u>\$ 500</u>
9	<u>21,001 to 26,000</u>	<u>\$ 600</u>
10	<u>26,001 to 30,000</u>	<u>\$ 700</u>
11	<u>30,001 to 33,000</u>	<u>\$ 800</u>
12	<u>33,001 to 36,000</u>	<u>\$ 900</u>
13	<u>36,001 to 40,000</u>	<u>\$1,000</u>
14	<u>40,001 to 44,000</u>	<u>\$1,100</u>
15	<u>44,001 to 48,000</u>	<u>\$1,200</u>
16	<u>48,001 to 52,000</u>	<u>\$1,300</u>
17	<u>52,001 to 56,000</u>	<u>\$1,400</u>
18	<u>56,001 to 60,000</u>	<u>\$1,500</u>
19	<u>60,001 to 64,000</u>	<u>\$1,600</u>
20	<u>64,001 to 68,000</u>	<u>\$1,700</u>
21	<u>68,001 to 73,280</u>	<u>\$1,800</u>
22	<u>73,281 to 76,000</u>	<u>\$1,900</u>
23	<u>76,001 to 78,000</u>	<u>\$2,000</u>
24	<u>78,001 to 78,500</u>	<u>\$2,100</u>
25	<u>78,501 to 79,000</u>	<u>\$2,200</u>
26	<u>79,001 to 80,000</u>	<u>\$2,300</u>

27 The department shall by rules and regulations provide for the
28 issuance of such licenses.

29 Section 5. Section 6 of the act, amended May 9, 1972
30 (P.L.279, No.68), is amended to read:

1 Section 6. Dealer-user's Reports and Payments of Tax;
2 Discount Allowed; Interest and Penalties.--For the purpose of
3 ascertaining the amount of tax payable under this act, it shall
4 be the duty of every dealer-user, on or before the [next to the
5 last business] fifteenth day of each month, to file with the
6 department, upon forms prescribed, prepared and furnished by the
7 department, a report under oath or affirmation of the fuels used
8 by him within this Commonwealth during the preceding month. This
9 report shall include all such information as the department may
10 require and prescribe. Dealer-users having more than one place
11 of business within this Commonwealth shall combine in each
12 report the use of fuels at all such separate places of business.

13 Dealer-users, at the time of making every report required by
14 this section, shall compute and pay to the department the tax
15 due to the Commonwealth on fuels used by him during the
16 preceding month. Fuels not accounted for to the satisfaction of
17 the department shall be deemed to have been used for taxable
18 purposes and taxes imposed thereon and collected by the
19 department.

20 If the report required herein is filed and tax paid on time,
21 a discount [of two per centum (2%) of the gross amount of tax]
22 the lesser of one per centum (1%) of the gross tax or five
23 hundred dollars (\$500) shall be allowed the dealer-user.

24 The amount of all taxes imposed under the provisions of this
25 act, for each month, shall be due and payable on the [next to
26 the last business] fifteenth day of the next succeeding month,
27 and shall bear interest at the rate of one per centum (1%) per
28 month or fractional part of a month from the date they are due
29 and payable until paid. The report or payment of tax as provided
30 by this section, will be considered to have been duly and timely

1 filed if such report or payment is [deposited] postmarked in the
2 United States mail [with postage prepaid in time to reach the
3 department in the ordinary course of such mails] on or before
4 the [next to the last business] fifteenth day of a given
5 calendar month. [In any case, the report or payment will be
6 considered to have been duly and timely filed if such report or
7 payment bears a postmark date at least two days prior to the
8 next to the last business day of a given calendar month.]

9 If any dealer-user shall fail, neglect or refuse to make any
10 report or payment as herein required, an additional ten per
11 centum (10%) of the gross amount of tax shall be added by the
12 department and collected as hereinafter provided, and in
13 addition thereto the license of a dealer-user may forthwith be
14 suspended or revoked by the department and required to be
15 surrendered to the department.

16 Section 6. Subsection (b) of section 7 and section 9 of the
17 act are amended to read:

18 Section 7. Determination and Redetermination of Tax;
19 Penalties and Interest Due.--* * *

20 (b) Promptly after the date of any such determination, the
21 department shall send, by [registered] first class mail, a copy
22 thereof to such dealer-user. Within thirty (30) days after
23 notice of any such determination, such dealer-user may file with
24 the department a petition for redetermination of such tax. Every
25 petition for redetermination shall state specifically the
26 reasons which the petitioner believes entitle him to such
27 redetermination, and shall be supported by affidavit that it is
28 not made for the purpose of delay and that the facts therein set
29 forth are true. It shall be the duty of the department, within
30 six (6) months after the date of any petition, to dispose of any

1 petition for redetermination. Notice of the action taken upon
2 any petition for redetermination shall be given to the
3 petitioner promptly after the date of action on petition by the
4 department.

5 * * *

6 Section 9. Regulations; Records Required and Retention of
7 Records by All Dealer-users and Carriers.--(a) The secretary
8 shall have the authority to prescribe all forms upon which
9 reports shall be made to the department and any other forms
10 required for the proper administration of this act, and shall
11 prescribe and cause to be published all needful rules and
12 regulations for the enforcement of this act.

13 (b) Every dealer-user shall maintain, issue and keep, as the
14 case may be, for a period of [two (2)] five (5) years, complete
15 records of fuels received, used, sold or delivered within this
16 Commonwealth by such dealer-user, including suitable books and
17 records of accounts and such other pertinent papers as may be
18 required by regulation. Every carrier shall keep similar records
19 with respect to deliveries of products capable of being used as
20 fuels.

21 (c) Any person shall, at the request of the department,
22 furnish to it information with respect to all sales and
23 deliveries made by him to licensed dealer-users of such products
24 capable of being used as fuels, as may be designated by
25 regulations issued by the department.

26 (d) Every taxpayer shall retain records required by this act
27 at a place within this Commonwealth, or may elect to retain
28 records outside the Commonwealth provided that such taxpayer
29 shall assume reasonable out-of-state audit expenses.

30 Penalty.--Any person failing to comply with any of the

1 provisions of this section shall, upon summary conviction before
2 a magistrate, be sentenced to pay a fine of one hundred dollars
3 (\$100) and costs of prosecution for each offense or to undergo
4 imprisonment for not more than thirty (30) days for each
5 offense, or both.

6 Section 7. The act is amended by adding a section to read:

7 Section 9.1. Limitations.--(a) The amount of the tax
8 imposed by this act shall be assessed within five (5) years
9 after the date when the return provided for by section 6 is
10 filed. Any such assessment may be made at any time during such
11 period notwithstanding that the department may have made one or
12 more previous assessments against the taxpayer for the year in
13 question or for any part of such year. In any such case, no
14 credit shall be given for any penalty previously assessed or
15 paid.

16 (b) Where no report is filed, the amount of the tax due may
17 be assessed and collected at any time as to taxable transactions
18 not reported.

19 (c) Where the taxpayer willfully files a false or fraudulent
20 report with intent to evade the tax imposed by this act, the
21 amount due may be assessed and collected at any time.

22 (d) Notwithstanding any of the foregoing provisions of this
23 section, where, before the expiration of the period prescribed
24 therein for the assessment of a tax, a taxpayer has consented,
25 in writing, that such a period be extended, the amount of tax
26 due may be assessed at any time within such extended period. The
27 period so extended may be extended further by subsequent consent
28 in writing, made before the expiration of the extended period.

29 Section 8. Section 17 of the act is amended to read:

30 Section 17. Enforcement.--[The department shall be charged

1 with the enforcement of this act. Such employes of the
2 Commonwealth as are designated as "Pennsylvania State Police"
3 shall aid the department in the enforcement of this act, and for
4 this purpose are hereby declared to be peace officers and are
5 hereby given authority throughout the Commonwealth to arrest on
6 view, without writ, rule, order or process, any person known to
7 have violated any of the provisions of this act.]

8 (a) The department shall be charged with the enforcement of
9 the provisions of this act, and for that purpose, may call upon
10 the assistance of the Pennsylvania State Police and all other
11 persons designated as peace officers in this Commonwealth, or of
12 such employes of the department as are officially designated by
13 the Secretary of Revenue as special investigators and who carry
14 identification of such capacity. Such police, peace officers or
15 special investigators shall have the power and authority upon
16 reasonable and probable cause to search for and seize without
17 warrant or process, except in private homes, any fuels,
18 equipment related thereto, books, documents and records
19 pertaining thereto and any vehicles or other property used or
20 employed in any such unlawful activity. For purposes of
21 enforcement of this act, the department shall be deemed a
22 "criminal justice agency" under the provisions of 18 Pa.C.S. §
23 9101 et seq. (relating to criminal history record information)
24 and related statutes.

25 (b) Whenever any person, acting for or on behalf of the
26 department, shall in good faith institute legal proceedings for
27 any variations of the provisions of this act and for any reason
28 shall fail to recover costs of record, such costs shall be a
29 charge upon the proper county, as shall such costs in the event
30 defendant is imprisoned for failure to pay fine or costs, or

1 both, and shall be audited and paid as are costs of like
2 character in said county.

3 Section 9. The act is amended by adding a section to read:

4 Section 21.1. Reward for Detection of Violations.--The
5 secretary is authorized to pay, out of any moneys appropriated
6 from the Motor License Fund for the purpose, to any person,
7 other than a State officer or employe, who brings to his
8 attention any dealer-user who has failed to file the reports
9 required and pay the tax imposed by this act, such sums as he
10 may deem proper, not exceeding ten per centum (10%) of the
11 amount of the tax, penalty and interest due; but a reward shall
12 not be paid hereunder unless and until collection of the
13 delinquent tax shall have been made or the dealer-user shall
14 have been convicted for violating this act.

15 Section 10. This act shall take effect in 60 days except
16 that the provision of section 5, relating to discount, shall not
17 take effect until the first day of the first full month
18 following the effective date of this act.