

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1662

Session of
1981

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

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES,
AS AMENDED, SEPTEMBER 14, 1981

AN ACT

1 Amending the act of May 21, 1931 (P.L.149, No.105) entitled, as
2 amended, "An act imposing a State tax, payable by those
3 herein defined as distributors, on liquid fuels used or sold
4 and delivered within the Commonwealth, which are practically,
5 and commercially suitable for use in internal combustion
6 engines for the generation of power; providing for the
7 collection and lien of the tax, and the distribution and use
8 of the proceeds thereof; requiring such distributors to
9 secure permits, to file corporate surety bonds and reports,
10 and to retain certain records; imposing duties on retail
11 dealers, common carriers, county commissioners, and such
12 distributors; providing for rewards; imposing certain costs
13 on counties; conferring powers and imposing duties on certain
14 State officers and departments; providing for refunds;
15 imposing penalties; and making an appropriation," changing
16 certain penalties and bond requirements; changing the
17 discount for tax payments, further providing for the filing
18 of reports and the retention of records; imposing limitations
19 on assessment and collection and further providing for the
20 enforcement of the act.

21 The General Assembly of the Commonwealth of Pennsylvania
22 hereby enacts as follows:

23 Section 1. Section 3, act of May 21, 1931 (P.L.149, No.105),
24 known as "The Liquid Fuels Tax Act," amended May 22, 1933
25 (P.L.917, No.170), is amended to read:

26 Section 3. Liquid Fuels Permit; Bond or Deposit of

1 Securities.--(a) (1) On and after the effective date of this <—
2 act, it shall be unlawful for any distributor to continue to
3 engage in, or thereafter to begin to engage in, the use or sale
4 and delivery of liquid fuels within this Commonwealth unless a
5 liquid fuels permit or permits shall have been issued to him, as
6 hereinafter prescribed.

7 (2) Penalty. Each day in which any distributor shall engage <—
8 in the use or sale and delivery of liquid fuels within this
9 Commonwealth without a liquid fuels permit or permits, as
10 required by this act, shall constitute a separate offense, and,
11 for each such offense, such distributor shall be guilty of a
12 [misdemeanor] summary offense, and shall, upon conviction
13 thereof, for the first offense be sentenced to pay a fine of
14 [two thousand dollars (\$2,000)] not less than two hundred
15 dollars (\$200), and for each subsequent or additional offense a
16 fine of not less than five hundred dollars (\$500) and costs of
17 prosecution, or undergo imprisonment for not more than [two
18 years] ninety (90) days, or both, in the discretion of the
19 court.

20 (b) (1) Every person desiring to operate as a distributor <—
21 shall file an application for a liquid fuels permit or permits
22 with the department. The application for a liquid fuels permit
23 or permits shall be made upon a form prescribed, prepared, and
24 furnished by the department, and shall set forth the name under
25 which the applicant transacts or intends to transact business,
26 the location of his place of business within this Commonwealth,
27 and such other information as the department may require. If the
28 applicant has or intends to have more than one place of business
29 within the Commonwealth, the application shall state the
30 location of each place of business. If the applicant is an

1 conditioned that the distributor will faithfully comply with the
2 provisions of this act during the effective period of his
3 permit. The department may at any time require any distributor
4 to furnish such additional, acceptable corporate surety bond as
5 shall be necessary to secure at all times the payment by him to
6 the Commonwealth of all taxes, penalties, and interest due under
7 the provisions of this act. If any distributor shall fail to
8 file such additional bond within ten days after written notice
9 from the department, the department may forthwith suspend or
10 revoke the permit or permits issued to him, and collect all
11 taxes, penalties, and interest due by him. For the purpose of
12 determining whether an existing bond or bonds are sufficient,
13 the department may at any time, by written notice, require any
14 distributor to furnish [a financial statement] financial
15 information in such form as it may prescribe. Upon failure of
16 any distributor to furnish [a financial statement] such
17 financial information within thirty (30) days of such written
18 notice, the department may forthwith suspend or revoke the
19 permit or permits issued to him, and shall collect all taxes,
20 penalties, and interest due by him.

21 (D) Any surety on a bond furnished by a distributor as <—
22 provided herein shall be released and discharged from any and
23 all liability to the Commonwealth accruing on such bond after
24 the expiration of sixty (60) days from the date upon which such
25 surety shall have lodged with the department a written request
26 to be released and discharged, but this provision shall not
27 operate to relieve, release, or discharge the surety from any
28 liability already accrued or which shall accrue before the
29 expiration of the sixty (60) day period. The department shall
30 promptly, upon receiving any such request, notify the

1 distributor who furnished the bond; and unless the distributor
2 shall, on or before the expiration of the sixty (60) day period,
3 file with the department a new bond, with corporate surety
4 approved by and acceptable to the department, the department
5 shall forthwith cancel the distributor's permit or permits.
6 Whenever a new bond shall be furnished by a distributor as
7 aforesaid, the department shall cancel and surrender the old
8 bond of the distributor as soon as it [and the Department of
9 Justice] shall be satisfied that all liability under the old
10 bond has been fully discharged.

11 [(d) Permits issued under the provisions of this act may be
12 renewed annually, before the first day of June, upon an
13 application, as aforesaid, being made to the department, but no
14 permit shall be renewed until the applicant shall file with the
15 department a new surety bond, in such amount as shall be fixed
16 by the department and conditioned that the distributor will
17 faithfully comply with the provisions of this act.]

18 (e) Nothing contained in this act shall require the filing
19 of any application or bond or the possession and display of a
20 liquid fuels permit for the use or sale and delivery of liquid
21 fuels in interstate or foreign commerce not within the taxing
22 power of the Commonwealth, or for the use of liquid fuels by the
23 United States government.

24 (f) Any person required by the provisions of this section to
25 file a surety bond may, in lieu thereof, deposit with the State
26 Treasurer bonds of the United States or of the Commonwealth of
27 Pennsylvania, the [par] fair market value thereof to be of the
28 amount of the surety bond required of such person, or in the
29 discretion of the secretary securities acceptable to him
30 including but not limited to bank accounts to which only the

1 department has access, irrevocable letters of credit or stocks
2 and bonds, provided that the established market value thereof is
3 not less than the amount of the surety bond required of such
4 persons. The treasurer shall issue to such person a certificate
5 of such deposit, which he shall file with the Department of
6 Revenue. Such securities deposited with the State Treasurer
7 shall be held as a guarantee that the holder of the permit shall
8 faithfully comply with the provisions of this act during the
9 effective period of his permit. The said securities shall be
10 retained by the State Treasurer for a period of sixty (60) days
11 after the termination of the permit of such person, whether by
12 his own act or by action of the department, and such securities
13 shall not be released from any liability to the Commonwealth
14 already accrued or which shall accrue before the expiration of
15 the sixty day period. At the end of such sixty day period, the
16 said securities shall be returned to their owner only if all
17 claims of the Commonwealth, guaranteed by such deposit, have
18 been fully satisfied. Interest accrued upon any such deposit
19 SHALL be maintained in for the account of the taxpayer and shall <—
20 be periodically distributed to the taxpayer if all claims of the
21 Commonwealth have been satisfied.

22 (G) Penalty. Any person assigning or attempting to assign a <—
23 liquid fuels permit, or who shall fail to display conspicuously
24 his permit at the place for which it is issued, shall, upon
25 summary conviction before a magistrate, be sentenced to pay a
26 fine of twenty-five dollars (\$25.00) and costs of prosecution,
27 and, in default of payment thereof, shall undergo imprisonment
28 for not more than ten days.

29 Section 2. Section 6 of the act, amended May 9, 1972
30 (P.L.277, No.67), is amended to read:

1 Section 6. Distributor's Report and Payment of Tax.--(A) <—
2 For the purpose of ascertaining the amount of tax payable under
3 this act, it shall be the duty of every distributor, on or
4 before the [next to the last business] ~~fifteenth~~ TWENTIETH day <—
5 of each month, to transmit to the department, upon a form
6 prescribed, prepared, and furnished by the department, a report,
7 under oath or affirmation, of the liquid fuels used or delivered
8 by him within this Commonwealth during the preceding month. Such
9 report shall show the number of gallons of liquid fuels used or
10 delivered within the Commonwealth during the period for which it
11 is made, and such further information as the department shall
12 prescribe. A distributor having more than one place of business
13 within this Commonwealth shall combine, in each report, the use
14 or delivery of liquid fuels at all such separate places of
15 business.

16 (B) Every distributor, at the time of making every report <—
17 required by this section, shall compute and pay to the
18 department the tax due to the Commonwealth on liquid fuels used
19 or sold and delivered by him during the preceding month, less a
20 discount, if the report is filed and the tax paid on time,
21 [computed as follows: two per centum, if such tax shall amount
22 to fifty thousand dollars (\$50,000) or less; one and one-half
23 per centum, on tax in excess of fifty thousand dollars (\$50,000)
24 and not exceeding seventy-five thousand dollars (\$75,000); one
25 per centum, on tax in excess of seventy-five thousand dollars
26 (\$75,000) and not exceeding one hundred thousand dollars
27 (\$100,000); and one-half of one per centum, on tax in excess of
28 one hundred thousand dollars (\$100,000)] ~~which shall be the~~ <—
29 ~~lesser of one per centum of the gross tax or five hundred~~ <—
30 ~~dollars (\$500).~~ The amount of all taxes imposed under the

1 provisions of this act for each month shall be due and payable
2 on the [next to the last business] ~~fifteenth~~ TWENTIETH day of <—
3 the next succeeding month, and shall bear interest at the rate
4 of one per centum per month, or fractional part of a month, from
5 the date they are due [and payable] until paid. The report or
6 payment of tax as provided by this section, will be considered
7 to have been duly and timely filed if such report or payment is
8 [deposited] postmarked in the United States mail [with postage
9 prepaid in time to reach the department in the ordinary course
10 of such mails] on or before the [next to the last business]
11 ~~fifteenth~~ TWENTIETH day of a given calendar month. [In any case, <—
12 the report or payment will be considered to have been duly and
13 timely filed if such report or payment bears a postmark date at
14 least two days prior to the next to the last business day of a
15 given calendar month.]

16 (C) If any distributor shall neglect or refuse to make any <—
17 report and payment as herein required, an additional ten per
18 centum of the amount of the tax shall be added by the
19 department, and collected as hereinafter provided, and, in
20 addition thereto, the liquid fuels permit of such distributor
21 may be suspended or revoked by the department.

22 Section 3. Subsections (b) and (e) of section 7 of the act,
23 amended June 21, 1947 (P.L.881, No.370), are amended to read:

24 Section 7. Determination and Redetermination of Tax,
25 Penalties, and Interest Due.--* * *

26 (b) Promptly after the date of any such determination, the
27 department shall send, by [registered] first class mail, a copy
28 thereof to such distributor. Within [ninety (90)] thirty (30)
29 days after the date upon which the copy of any such
30 determination was mailed, such distributor may file with the

1 department a petition for redetermination of such tax. Every
2 petition for redetermination shall state specifically the
3 reasons which the petitioner believes entitle him to such
4 redetermination, and shall be supported by affidavit that it is
5 not made for the purpose of delay and that the facts therein set
6 forth are true. It shall be the duty of the department, within
7 six (6) months after the date of any determination, to dispose
8 of any petition for redetermination. Notice of the action taken
9 upon any petition for redetermination shall be given to the
10 petitioner promptly after the date of redetermination by the
11 department.

12 * * *

13 (e) If any distributor shall neglect or refuse to make any
14 report and payment of tax required by this act, the department
15 shall estimate the tax due by such distributor, and determine
16 the amount due by him for taxes, penalties, and interest
17 thereon, as prescribed herein, from which determination there
18 shall be no right of review or appeal but the department may
19 require a report to be filed, and thereupon make a settlement
20 based upon such report and cancel the estimated settlement. Upon
21 any such neglect or refusal, the liquid fuels permit or permits
22 issued to such distributor may be suspended or revoked by the
23 department, and required to be surrendered to the department.

24 Section 4. Section 9 of the act is amended to read:

25 Section 9. Retention of Records by Distributors and
26 Dealers.--(A) Each distributor shall maintain and keep, for a
27 period of [two] five years, such record or records of liquid
28 fuels used or sold and delivered within this Commonwealth by
29 such distributor, together with invoices, bills of lading, and
30 other pertinent papers as may be required by the department.

<—

1 (B) It shall be the duty of every person, purchasing liquid
2 fuels taxable under this act from a distributor for the purpose
3 of resale, to maintain and keep for a period of [one year] five
4 years a record of liquid fuels received, the amount of tax paid
5 to the distributor as part of the purchase price, together with
6 delivery tickets, invoices, and bills of lading, and such other
7 records as the department shall require.

8 (C) Every taxpayer shall retain records required by this act
9 at a place within this Commonwealth, provided that a taxpayer
10 who elects to retain records as required by this act outside the
11 Commonwealth shall assume reasonable out-of-state audit
12 expenses.

13 (D) Penalty. Any person violating any of the provisions of
14 this section shall be guilty of a [misdemeanor] summary offense,
15 and shall, upon conviction thereof for the first offense, be
16 sentenced to pay a fine of [one thousand dollars (\$1,000.00)]
17 not less than two hundred dollars (\$200), and for each
18 subsequent additional offense, a fine of not less than five
19 hundred dollars (\$500) and costs of prosecution, or to undergo
20 imprisonment for not more than [one year] ninety (90) days, or
21 both, in the discretion of the court.

22 Section 5. The act is amended by adding a section to read:

23 Section 9.1. Limitations.--(a) The amount of the tax
24 imposed by this act shall be assessed within five years after
25 the date when the report provided for by section 6 is filed. Any
26 such assessment may be made at any time during such period
27 notwithstanding that the department may have made one or more
28 previous assessments against the taxpayer for the year in
29 question, or for any part of such year. In any such case, no
30 credit shall be given for any penalty previously assessed or

1 paid.

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

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

8 (d) Notwithstanding any of the foregoing provisions of this
9 section, where, before the expiration of the period prescribed
10 therein for the assessment of a tax, a taxpayer has consented in
11 writing that such period be extended, the amount of tax due may
12 be assessed at any time within such extended period. The period
13 so extended may be extended further by subsequent consents, in
14 writing, made before the expiration of the extended period.

15 Section 6. Sections 11, 15 and 18 of the act are amended to
16 read:

17 Section 11. Discontinuance or Transfer of Business.--(A) <—
18 Whenever a distributor engaged in the use or sale and delivery
19 of liquid fuels ceases to be a distributor by reason of the
20 discontinuance, sale, or transfer of his business, it shall be
21 his duty to notify the department, in writing, within ten days
22 after the discontinuance, sale, or transfer takes effect. His
23 notice shall give the date of discontinuance, and, in the event
24 of a sale or transfer of his business, the name and address of
25 the purchaser or transferee thereof. It shall also be the duty
26 of any such distributor, within ten days after the
27 discontinuance, sale, or transfer takes effect, to make a report
28 and pay all taxes, interest, and penalties that may be due by
29 him, and to surrender to the department the permit or permits
30 theretofore issued to him by the department.

1 (B) Penalty. Any person violating any of the provisions of <—
2 this section shall be guilty of a [misdemeanor] summary offense,
3 and shall, upon conviction thereof for a first offense, be
4 sentenced to pay a fine of not less than [fifty dollars (\$50.00)
5 nor more than three hundred dollars (\$300.00),] two hundred
6 dollars (\$200), and for each subsequent or additional offense,
7 of not less than five hundred dollars (\$500), and costs of
8 prosecution, or to undergo imprisonment for not more than [one
9 year] ninety (90) days, or both.

10 Section 15. Reports from Common Carriers.--(A) Every <—
11 person, including railroad companies, street, suburban and
12 interurban, railway companies, pipe line companies, and water
13 transportation companies, transporting liquid fuels in any
14 manner, either in interstate or intrastate commerce, to a point
15 within this Commonwealth from a point within or without the
16 Commonwealth, shall report, under oath and affirmation, to the
17 department, on or before the last day of each month, for the
18 preceding month, all deliveries of liquid fuels made to points
19 within this Commonwealth.

20 (B) Such reports shall be on forms prescribed, prepared, and <—
21 furnished by the department, and shall state the names and
22 addresses of the consignor and consignee, the number of gallons
23 of liquid fuels transported, and any other information which the
24 department may require.

25 (C) Penalty. Any person violating any of the provisions of <—
26 this section shall be guilty of a [misdemeanor] summary offense,
27 and shall, upon conviction thereof for a first offense, be
28 sentenced to pay a fine of not [more than one thousand dollars
29 (\$1,000.00)] less than two hundred dollars (\$200) and for each
30 subsequent or additional offense, a fine of not less than five

1 hundred dollars (\$500), and costs of prosecution, or to undergo
2 imprisonment for not more than [one year] ninety (90) days, or
3 both.

4 Section 18. Enforcement.--[The department shall be charged
5 with the enforcement of the provisions of this act. Such
6 employes of the Commonwealth as are designated as "State Highway
7 Patrolmen" shall aid the department in the enforcement of this
8 act, and, for this purpose, are hereby declared to be peace
9 officers, and are hereby given police power and authority
10 throughout the Commonwealth to arrest on view, without writ,
11 rule, order, or process, any person known to have violated any
12 of the provisions of this act.]

13 (a) The department shall be charged with the enforcement of
14 the provisions of this act, and for that purpose, may call upon
15 the assistance of the Pennsylvania State Police and all other
16 persons designated as peace officers in this Commonwealth or of
17 such employes of the department as are officially designated by
18 the Secretary of Revenue as special investigators and who carry
19 identification of such capacity. Such police, peace officers or
20 special investigators shall have the power and authority upon
21 reasonable and probable cause to search for and seize without
22 warrant or process, except in private homes, any liquid fuels,
23 equipment related thereto, books, documents and records
24 pertaining thereto and any vehicles or other property used or
25 employed in any such unlawful activity. For purposes of
26 enforcement of this act, the department shall be deemed a
27 "criminal justice agency" under the provisions of 18 Pa.C.S. §
28 9101 et seq. (relating to criminal history record information)
29 and related statutes.

30 (b) Whenever any person acting for or on behalf of the

1 department shall, in good faith, institute legal proceedings for
2 any violations of the provisions of this act, and, for any
3 reason, shall fail to recover costs of record, such costs shall
4 be a charge upon the proper county, as shall such costs in the
5 event defendant is imprisoned for failure to pay fine or costs,
6 or both, and shall be audited and paid as are costs of like
7 character in said county.

8 Section 7. This act shall take effect in 60 days except that
9 the provision of section 2 relating to discounts shall not take
10 effect until the first day of the first full month following the
11 effective date of this act.