

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 468 Session of
1991INTRODUCED BY MARKOSEK, PETRARCA, CESSAR, OLASZ, TIGUE, GEIST,
MIHALICH, LAUGHLIN, HESS AND NAHILL, MARCH 11, 1991AS REPORTED FROM COMMITTEE ON TRANSPORTATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 3, 1991

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated
2 Statutes, FURTHER PROVIDING FOR EXEMPTIONS FROM TITLE AND
3 REGISTRATION FEES; imposing a motorbus road tax; providing
4 penalties; and making a ~~repeal~~ REPEALS. <—

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 ~~Section 1. Title 75 of the Pennsylvania Consolidated~~ <—
8 ~~Statutes is amended by adding a chapter to read:~~

9 SECTION 1. CHAPTER 81 OF TITLE 75 OF THE PENNSYLVANIA <—
10 CONSOLIDATED STATUTES IS REPEALED.

11 SECTION 2. SECTION 1901(B) OF TITLE 75 OF THE PENNSYLVANIA
12 CONSOLIDATED STATUTES IS AMENDED BY ADDING A PARAGRAPH TO READ:
13 § 1901. EXEMPTION OF ENTITIES AND VEHICLES FROM FEES.

14 * * *

15 (B) TITLE AND REGISTRATION FEES.--NO FEE SHALL BE CHARGED
16 FOR TITLING OR REGISTRATION OF ANY OF THE FOLLOWING:

17 * * *

18 (5) VEHICLES ON LOAN OR TRANSFERRED TO A NONPROFIT

CORPORATION BY THE UNITED STATES DEPARTMENT OF DEFENSE OR THE
UNITED STATES GENERAL SERVICES ADMINISTRATION AND USED
EXCLUSIVELY FOR LEASING TO POLITICAL SUBDIVISIONS AND STATE
AGENCIES. SUCH VEHICLES SHALL BE ISSUED THE SAME KIND OF
REGISTRATION PLATES AS ARE ISSUED TO VEHICLES REGISTERED BY
POLITICAL SUBDIVISIONS.

* * *

SECTION 3. TITLE 75 IS AMENDED BY ADDING A CHAPTER TO READ:

CHAPTER 98

MOTORBUS ROAD TAX

Sec.

9801. Short title of chapter.

9802. Definitions.

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9804. Exemptions.

9805. Credit for motor fuel tax payment.

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interest.

9816. Determination, redetermination and review.

9817. Timely mailing treated as timely filing and payment.

9818. Availability of records of other agencies.

1 9819. False statements and penalties.

2 9820. Special investigators; powers.

3 9821. Regulations.

4 § 9801. Short title of chapter.

5 This chapter shall be known and may be cited as the Motorbus
6 Road Tax Act.

7 § 9802. Definitions.

8 The following words and phrases when used in this chapter
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Bus company." Every person who operates or causes to be
12 operated any motorbus on any highway in this Commonwealth.

13 "Department." The Department of Revenue of the Commonwealth.

14 "Highway." The Pennsylvania Turnpike and every way or place,
15 of whatever nature, open to the use of the public as a matter of
16 right for purposes of vehicular travel. The term does not
17 include a roadway or driveway upon grounds owned by private
18 persons, colleges, universities or other institutions.

19 "Motor fuel." Includes "fuels" as defined in the act of
20 January 14, 1952 (1951 P.L.1965, No.550), known as the Fuel Use
21 Tax Act, and "liquid fuels" as defined in the act of May 21,
22 1931 (P.L.149, No.105), known as The Liquid Fuels Tax Act.

23 "Motorbus." A bus with a seating capacity of 20 or more
24 passengers, excluding the driver, except a school bus.

25 "Operations." Operations of all motorbuses, whether loaded
26 or empty, whether for compensation or not for compensation, and
27 whether owned by or leased to the bus company which operates
28 them or causes them to be operated.

29 "Secretary." The Secretary of Revenue of the Commonwealth.

30 § 9803. Imposition of tax.

1 (a) General rule.--Every bus company shall pay a road tax,
2 calculated on the amount of motor fuel used in its operations on
3 highways within this Commonwealth, equivalent to the sum of:

4 (1) the rate per gallon of the Pennsylvania Liquid Fuels
5 Tax which is currently in effect; and

6 (2) the amount of tax, expressed on a cents-per-gallon
7 basis, imposed pursuant to Chapter 95.

8 (b) Other taxes unaffected.--The taxes imposed on bus
9 companies by this chapter are in addition to any taxes of
10 whatever character imposed on such companies by any other
11 statute.

12 § 9804. Exemptions.

13 The requirements of this chapter do not apply to the
14 following motorbuses:

15 (1) A motorbus operated by or on behalf of any
16 department, board or commission of the Commonwealth, or any
17 political subdivision thereof, or any quasi-governmental
18 authority of which this Commonwealth is a participating
19 member, or any agency of the Federal Government or the
20 District of Columbia, or of any state or any political
21 subdivision thereof which grants similar exemptions to
22 publicly owned vehicles registered in this Commonwealth.

23 (2) An unloaded or towed motorbus which enters this
24 Commonwealth solely for the purpose of securing repairs or
25 reconditioning. The repair facility shall furnish to the bus
26 company a certificate to be carried by the motorbus operator
27 while the vehicle is in this Commonwealth for the purposes of
28 this paragraph.

29 (3) A motorbus needing emergency repairs which secures
30 authorization from the Pennsylvania State Police to enter

1 this Commonwealth under this section.

2 § 9805. Credit for motor fuel tax payment.

3 (a) General rule.--Every bus company subject to the tax
4 imposed under this chapter shall be entitled to a credit on the
5 tax, for other fuel taxes paid on all motor fuel purchased by
6 the bus company within this Commonwealth for use in its
7 operation either within or without this Commonwealth. For
8 purposes of this section, other fuel taxes shall include the tax
9 imposed pursuant to the act of May 21, 1931 (P.L.149, No.105),
10 known as The Liquid Fuels Tax Act, the tax imposed pursuant to
11 the act of January 14, 1952 (1951 P.L.1965, No.550), known as
12 the Fuel Use Tax Act, the tax imposed pursuant to Chapter 95
13 (relating to taxes for highway maintenance and construction),
14 and all similar taxes now or hereafter imposed on motor fuel.
15 Evidence of the payment of the tax in such form as may be
16 required by, or is satisfactory to, the department, shall be
17 furnished by each bus company claiming the credit.

18 (b) Excess credit.--When the amount of the credit to which
19 any bus company is entitled for any reporting period exceeds the
20 amount of the tax for which the bus company is liable for the
21 same period, the department may apply all or part of the amount
22 of such excess credit against any liability in respect of the
23 tax imposed by this chapter on the bus company which incurred
24 the excess credit and upon request shall issue a refund in the
25 remaining amount of the credit to the bus company. For purposes
26 of payment of interest on refunds pursuant to section 806.1 of
27 the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal
28 Code, the amount of the refund shall be considered an
29 "overpayment" of tax made with the report on which credit is
30 claimed. Refunds shall be paid out of the Motor License Fund. As

1 much of the moneys received as payment of the tax, interest and
2 penalties under this chapter as shall be necessary for the
3 payment of the refunds provided for in this chapter is hereby
4 appropriated for the payment of such refunds. No tax, interest,
5 penalty or fee received or derived from any other tax imposed by
6 the laws of this Commonwealth shall be used to pay any refund
7 due and payable under the provisions of this chapter.

8 § 9806. Tax due date.

9 The tax imposed under this chapter shall be paid by each bus
10 company quarterly to the department on or before the last day of
11 April, July, October and January of each year and shall be
12 calculated upon the amount of motor fuel used in its operations
13 on highways within this Commonwealth during the quarter ending
14 with the last day of the preceding month.

15 § 9807. Tax revenue to Motor License Fund.

16 All taxes, fees, penalties and interest paid under this
17 chapter shall be credited to and are hereby appropriated to the
18 Motor License Fund as provided for by section 11 of Article VIII
19 of the Constitution of Pennsylvania.

20 § 9808. Calculation of amount of fuel used in Commonwealth.

21 The amount of motor fuel used in the operations of any bus
22 company on highways within this Commonwealth shall be such
23 proportion of the total amount of the motor fuel used in its
24 entire operations within and without this Commonwealth as the
25 total number of miles traveled on highways within this
26 Commonwealth bears to the total number of miles traveled within
27 and without this Commonwealth.

28 § 9809. Report requirements.

29 Every bus company subject to the tax imposed by this chapter
30 shall, on or before the last day of April, July, October and

1 January of every year, make to the department such reports of
2 its operations during the quarter ending the last day of the
3 preceding month as the department may require and such other
4 reports from time to time as the department may deem necessary.
5 The department may, by regulation, permit bus companies whose
6 estimated annual liability under this chapter is \$250 or less to
7 file its report on an annual basis.

8 § 9810. Identification markers required.

9 (a) General rule.--The secretary shall provide an
10 identification marker for every motorbus.

11 (1) All motorbuses required to display the
12 identification marker shall permanently affix and display the
13 identification marker in such manner as the department, by
14 regulation, may specify.

15 (2) The identification marker shall remain the property
16 of the Commonwealth and may be recalled for any violation of
17 the provisions of this chapter or the regulations promulgated
18 thereunder.

19 (b) Fee.--The fee for issuance of an identification marker
20 shall be \$5.

21 (c) Issuance of markers.--Identification markers shall be
22 issued on a 12-month basis, effective April 1 of each year, and
23 shall be valid through the next succeeding March 31; however,
24 enforcement of this section shall not become effective until
25 April 15 of each year as to motorbuses displaying the previous
26 year's identification marker.

27 (d) Operation without identification marker unlawful.--It
28 shall be unlawful to operate or to cause to be operated in this
29 Commonwealth any motorbus unless the vehicle bears the
30 identification marker required by this section.

(e) Exemption.--

(1) The secretary may, by regulation, exempt from the requirement to display the identification marker motorbuses which in his opinion are clearly identifiable such that effective enforcement of this chapter will not suffer thereby.

(2) For a period not exceeding five days, as to any one bus company, the Secretary of Revenue, by letter or telegram, may authorize the operation of a motorbus without the identification marker required when the enforcement of this section for that period would cause undue delay and hardship in the operation of such motorbus.

(3) The fee for such permits shall be \$25 for each motorbus.

(4) Conditions for the issuance of such permits shall be set forth in regulations promulgated by the department.

§ 9811. Average consumption.

In the absence of adequate records or other evidence satisfactory to the department showing the number of miles operated by a bus company's motorbuses per gallon of motor fuel, any such motorbus shall be deemed to have consumed one gallon of motor fuel for each four miles operated.

§ 9812. Records.

Every bus company shall keep such records, in such form as the department reasonably may prescribe, as will enable the bus company to report and enable the department to determine the total number of over-the-road miles traveled by its entire fleet of motorbuses, the total number of over-the-road miles traveled in this Commonwealth by the entire fleet, the total number of gallons of motor fuel used by the entire fleet and the total

1 number of gallons of motor fuel purchased in this Commonwealth
2 for the entire fleet. All such records shall be safely preserved
3 for a period of five years in such manner as to insure their
4 security and availability for inspection by the secretary or any
5 authorized employee engaged in the administration of this
6 chapter. Upon application in writing stating the reasons
7 therefor, the department may in its discretion consent to the
8 destruction of any such records at any time within that period
9 if the records pertain to a period which has been audited by the
10 department. Every taxpayer shall retain records required by this
11 chapter at a place within this Commonwealth, but a taxpayer who
12 elects to retain records outside of this Commonwealth shall
13 assume reasonable out-of-State audit expenses.

14 § 9813. Penalty and interest for failure to report or pay tax.

15 When any bus company fails to file a report within the time
16 prescribed by this chapter, he shall pay as a penalty \$25 for
17 each failure to file on or before the prescribed date. In
18 addition to this penalty, any unpaid tax shall bear interest
19 pursuant to section 806 of the act of April 9, 1929 (P.L.343,
20 No.176), known as The Fiscal Code, until the tax is paid. The
21 penalties and interest charges imposed shall be paid to the
22 department in addition to the tax due.

23 § 9814. Time for payment of taxes, penalties and interest.

24 All taxes, penalties and interest assessed under this
25 chapter, unless earlier payment is provided in this chapter,
26 shall be paid within 15 days after notice and demand have been
27 mailed to the bus company by the department. If the taxes,
28 penalties and interest assessed pursuant to this section and
29 section 9813 (relating to penalty and interest for failure to
30 report or pay tax) are not paid within 15 days, there shall be

1 added to the amount of assessment, in addition to interest as
2 already provided and any other penalties provided by law, a sum
3 equivalent to 5% of the tax. Payment of any taxes, penalties and
4 interest assessed under this chapter shall not prejudice a bus
5 company's right to file a petition for redetermination, refund
6 or review with the department, the Board of Finance and Revenue
7 or the courts.

8 § 9815. Manner of payment and recovery of taxes, penalties and
9 interest.

10 (a) General rule.--All penalties and interest when imposed
11 under this chapter shall be payable to and recoverable by the
12 department in the same manner as if they were part of the tax
13 imposed.

14 (b) Imposition of lien.--The taxes, fees, interests and
15 penalties imposed under this chapter, from the time they are
16 due, shall be a debt of a bus company which does not maintain
17 premises for the transaction of business within this
18 Commonwealth, recoverable in an action of assumpsit in the name
19 of the Commonwealth. This debt, whether sued upon or not, shall
20 be a lien on all the property of the debtor, except as against
21 an innocent purchaser for value without notice thereof, and
22 shall have priority both in lien and distribution of the assets
23 of the bus company, whether in bankruptcy, insolvency or
24 otherwise. The proceeds of any judgment or order obtained under
25 this section shall be paid to the department.

26 (c) Recording of lien and execution.--Any tax determined to
27 be due from any person who maintains premises for the conduct of
28 business in this Commonwealth and remaining unpaid after demand
29 for the tax, and all penalties and interest thereon, shall be a
30 lien in favor of the Commonwealth upon the real and personal

1 property of the person, but only after the lien has been entered
2 and docketed of record by the prothonotary of the county where
3 the property is situated. The department may at any time
4 transmit to the prothonotaries of the respective counties
5 certified copies of all liens for such taxes, penalties and
6 interest, and it shall be the duty of each prothonotary
7 receiving the lien to enter and docket the lien of record in his
8 office, which lien shall be indexed as judgments are now
9 indexed. A writ of execution may directly issue upon the lien
10 without the issuance and prosecution to judgment of a writ of
11 scire facias. Not less than ten days before issuance of any
12 execution on the lien, notice of the filing and the effect of
13 the lien shall be sent by registered mail to the taxpayer at his
14 last known post office address.

15 (d) Priority of lien.--The lien imposed under this section
16 shall have priority from the date of its recording and shall be
17 fully paid and satisfied out of the proceeds of any judicial
18 sale of property subject thereto, before any other obligation,
19 judgment, claim, lien or estate to which the property may
20 subsequently become subject, except costs of the sale and of the
21 writ upon which the sale was made, and real estate taxes and
22 municipal claims against the property, but shall be subordinate
23 to mortgages and other liens existing and duly recorded or
24 entered of record prior to the recording of the tax lien. In the
25 case of a judicial sale of property subject to a lien imposed
26 under this section upon a lien or claim over which the lien
27 imposed under this section has priority, the sale shall
28 discharge the lien imposed under this section to the extent only
29 that the proceeds are applied to its payment, and the lien shall
30 continue in full force and effect as to the balance remaining

1 unpaid.

2 (e) Renewal of lien.--The lien imposed under this section
3 shall continue for five years from the date of its entry of
4 record and may be renewed and continued in the manner provided
5 for the renewal of judgments.

6 § 9816. Determination, redetermination and review.

7 (a) Determination of correct tax.--If any person fails to
8 pay any tax imposed by this chapter for which he is liable or if
9 any person overpays the tax for which he is liable, the
10 department may make a determination of the correct amount of tax
11 and interest due by the person based upon any information within
12 its possession or that shall come into its possession. All
13 determinations shall be made so that notice thereof shall reach
14 the parties against whom made within five years after the due
15 date of the tax. Any assessment of additional tax may be made at
16 any time during that period notwithstanding that the department
17 may have made one or more previous assessments against the
18 taxpayer for the year in question or for any part of that year.
19 In any case, no credit shall be given for any penalty previously
20 assessed or paid.

21 (b) Failure to file report.--Where no report is filed, the
22 amount of the tax due may be assessed and collected at any time
23 as to taxable transactions not reported.

24 (c) False or fraudulent report.--Where the taxpayer
25 willfully files a false or fraudulent report with intent to
26 evade the tax imposed by this chapter, the amount of tax due may
27 be assessed and collected at any time.

28 (d) Extension of period for assessment.--Notwithstanding any
29 of the other provisions of this chapter, where, before the
30 expiration of the period prescribed therein for the

1 determination of the correct amount of tax, a taxpayer has
2 consented in writing that the period be extended, the correct
3 amount of tax may be determined at any time within the extended
4 period. The period so extended may be extended further by
5 subsequent consent in writing made before the expiration of the
6 extended period.

7 (e) Petition for redetermination.--Promptly after the date
8 of the determination, the department shall send, by first class
9 mail, a copy thereof to the person against whom it was made.
10 Within 90 days after the date on which the copy of any such
11 determination was mailed, the person may file with the
12 department a petition for redetermination of the taxes. The
13 petition for redetermination shall state specifically the
14 reasons which the petitioner believes entitle him to the
15 redetermination, and it shall be supported by affirmation that
16 it is not made for the purpose of delay and that the facts set
17 forth therein are true. It shall be the duty of the department,
18 within six months after the date of any determination, to
19 dispose of any petition for redetermination. Notice of the
20 action taken upon any petition for redetermination shall be
21 given to the petitioner promptly after the date of
22 redetermination by the department.

23 (f) Review and appeal.--Any person shall have the right to
24 review by the Board of Finance and Revenue and appeal in the
25 same manner and within the same time as provided by law in the
26 case of capital stock and franchise taxes imposed upon
27 corporations.

28 § 9817. Timely mailing treated as timely filing and payment.

29 With respect to all reports, claims, statements and other
30 documents required to be filed and all payments required to be

1 made under this chapter, a report, claim, statement and other
2 document or payment of tax withheld shall be considered as
3 timely filed if the report, claim, statement or other document
4 or payment which has been received by the department is
5 postmarked by the United States Postal Service on or prior to
6 the final day on which payment is to be received. For the
7 purposes of this chapter, the presentation of a receipt
8 indicating that the report, claim, statement or other document
9 or payment was mailed by registered or certified mail on or
10 before the due date shall be prima facie evidence of timely
11 filing of the report, claim, statement or other document or
12 payment.

13 § 9818. Availability of records of other agencies.

14 The records of any other Commonwealth agency, to the extent
15 that they may be pertinent to the administration and enforcement
16 of this chapter and the determination of liability thereunder,
17 shall be available to the department.

18 § 9819. False statements and penalties.

19 (a) False statements.--Any person who willfully and
20 knowingly makes, publishes, delivers or utters a false statement
21 orally or in writing or in the form of a receipt for the sale of
22 motor fuel, for the purpose of obtaining or attempting to
23 obtain, or to assist any person to obtain or attempt to obtain,
24 a credit or refund or reduction of liability for taxes under
25 this chapter commits a summary offense and shall, upon
26 conviction, be sentenced to pay a fine of not less than \$100 nor
27 more than \$500. For each subsequent or additional offense, the
28 person shall be sentenced to pay a fine of not less than \$200
29 nor more than \$500 or to imprisonment for not more than 90 days,
30 or both.

1 (b) Other penalties.--Any person violating any provision of
2 this chapter not covered by any other penalty contained in this
3 chapter commits a summary offense and shall, upon conviction, be
4 sentenced to pay a fine of not less than \$100 nor more than
5 \$500. For each subsequent or additional offense, the person
6 shall be sentenced to pay a fine of not less than \$200 nor more
7 than \$500 or to imprisonment for not more than 90 days, or both.
8 If the person convicted is a corporation, any imprisonment
9 imposed shall be served by the responsible corporate employee.

10 § 9820. Special investigators; powers.

11 Employees of the department who are designated as special
12 investigators, and who carry identification indicating such
13 capacity, are hereby declared to be peace officers of the
14 Commonwealth, are hereby given police power and authority
15 throughout this Commonwealth to arrest on view without warrant
16 any driver of a motorbus engaged in any operations in violation
17 of any provision of this chapter and shall have the power and
18 authority upon probable cause that any such violation may have
19 occurred to search and seize without warrant or process any
20 motorbus so operated.

21 § 9821. Regulations.

22 The department shall, from time to time, promulgate such
23 regulations as may be necessary for the effective enforcement of
24 this chapter.

25 Section ~~2~~ 4. The act of August 1, 1963 (P.L.476, No.249), <—
26 entitled "An act providing for the taxation of motor fuels
27 consumed by interstate buses upon a system uniform among
28 jurisdictions enacting the same provisions," is repealed.

29 ~~Section 3. This act~~ SECTION 5. THE ADDITION OF 75 PA.C.S. <—
30 CH. 98 shall apply on the first day of the first quarter

1 beginning at least three months after its effective date. The
2 provisions of 75 Pa.C.S. § 9810(d) shall not be enforced until
3 the first day of the second quarter beginning at least three
4 months after the effective date of this act. If this act takes
5 effect on or after October 1, 1991, any identification marker
6 issued for any period prior to April 1, 1992, shall not expire
7 until March 31, 1993.

8 Section 4 6. This act shall take effect immediately.

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