

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 AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 6, 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 repeals.

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

7 ~~Section 1. Chapter 81 of Title 75 of the Pennsylvania~~ <—
8 ~~Consolidated Statutes is repealed.~~

9 Section 2 1. Section 1901(b) of Title 75 of the Pennsylvania <—
10 Consolidated Statutes is amended by adding a paragraph to read:

11 § 1901. Exemption of entities and vehicles from fees.

12 * * *

13 (b) Title and registration fees.--No fee shall be charged
14 for titling or registration of any of the following:

15 * * *

16 (5) Vehicles on loan or transferred to a nonprofit
17 corporation by the United States Department of Defense or the
18 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 2. CHAPTER 81 OF TITLE 75 IS REPEALED.

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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.

9803. Imposition of tax.

9804. Exemptions.

9805. Credit for motor fuel tax payment.

9806. Tax due date.

9807. Tax revenue to Motor License Fund.

9808. Calculation of amount of fuel used in Commonwealth.

9809. Report requirements.

9810. Identification markers required.

9811. Average consumption.

9812. Records.

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

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

9815. Manner of payment and recovery of taxes, penalties and interest.

9816. Determination, redetermination and review.

9817. Timely mailing treated as timely filing and payment.

9818. Availability of records of other agencies.

9819. False statements and penalties.

1 9820. Special investigators; powers.

2 9821. Regulations.

3 § 9801. Short title of chapter.

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

6 § 9802. Definitions.

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

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

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

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

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

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

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

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

29 § 9803. Imposition of tax.

30 (a) General rule.--Every bus company shall pay a road tax,

1 calculated on the amount of motor fuel used in its operations on
2 highways within this Commonwealth, equivalent to the sum of:

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

5 (2) the amount of tax, expressed on a cents-per-gallon
6 basis, imposed pursuant to Chapter 95 (relating to taxes for
7 highway maintenance and construction).

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, AGENCY OR AUTHORITY thereof, or any <—
18 GOVERNMENTAL UNIT OR quasi-governmental authority of which <—
19 this Commonwealth is a participating member, or any agency of
20 the Federal Government or the District of Columbia, or of any
21 state or any political subdivision thereof which grants
22 similar exemptions to publicly owned vehicles registered in
23 this Commonwealth.

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

30 (3) A motorbus needing emergency repairs which secures

1 authorization from the Pennsylvania State Police to enter
2 this Commonwealth under this section.

3 § 9805. Credit for motor fuel tax payment.

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

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

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

9 § 9806. Tax due date.

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

16 § 9807. Tax revenue to Motor License Fund.

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

21 § 9808. Calculation of amount of fuel used in Commonwealth.

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

29 § 9809. Report requirements.

30 Every bus company subject to the tax imposed by this chapter

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

9 § 9810. Identification markers required.

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

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

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

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

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

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

1 identification marker required by this section.

2 (e) Exemption.--

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

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

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

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

18 § 9811. Average consumption.

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

24 § 9812. Records.

25 Every bus company shall keep such records, in such form as
26 the department reasonably may prescribe, as will enable the bus
27 company to report and enable the department to determine the
28 total number of over-the-road miles traveled by its entire fleet
29 of motorbuses, the total number of over-the-road miles traveled
30 in this Commonwealth by the entire fleet, the total number of

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

15 § 9813. Penalty and interest for failure to report or pay tax.

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

24 § 9814. Time for payment of taxes, penalties and interest.

25 All taxes, penalties and interest assessed under this
26 chapter, unless earlier payment is provided in this chapter,
27 shall be paid within 15 days after notice and demand have been
28 mailed to the bus company by the department. If the taxes,
29 penalties and interest assessed pursuant to this section and
30 section 9813 (relating to penalty and interest for failure to

1 report or pay tax) are not paid within 15 days, there shall be
2 added to the amount of assessment, in addition to interest as
3 already provided and any other penalties provided by law, a sum
4 equivalent to 5% of the tax. Payment of any taxes, penalties and
5 interest assessed under this chapter shall not prejudice a bus
6 company's right to file a petition for redetermination, refund
7 or review with the department, the Board of Finance and Revenue
8 or the courts.

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

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

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

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

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

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

1 continue in full force and effect as to the balance remaining
2 unpaid.

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

7 § 9816. Determination, redetermination and review.

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

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

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

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

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

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

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

29 § 9817. Timely mailing treated as timely filing and payment.

30 With respect to all reports, claims, statements and other

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

14 § 9818. Availability of records of other agencies.

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

19 § 9819. False statements and penalties.

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

1 or both.

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

11 § 9820. Special investigators; powers.

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

22 § 9821. Regulations.

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

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

30 Section 5. The addition of 75 Pa.C.S. Ch. 98 shall apply on

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

8 Section 6. This act shall take effect immediately.