

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 349 Session of
1989

INTRODUCED BY DORR, CAPPABIANCA, SERAFINI, GODSHALL, PRESTON,
HAGARTY, BURD, G. SNYDER, GEIST, MORRIS, CLYMER, NOYE, FOX,
DISTLER, S. H. SMITH, PHILLIPS, CORNELL, LANGTRY, BIRMELIN,
HECKLER, FLICK, LETTERMAN, BILLOW, BARLEY, BUNT,
D. W. SNYDER, MERRY, SCHULER, STAIRS, E. Z. TAYLOR, HERSHEY,
VROON, STUBAN, CIVERA, McVERRY AND ROBBINS, FEBRUARY 8, 1989

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, FEBRUARY 8, 1989

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," deleting the requirement that a dealer-user must
21 post a bond or deposit collateral securities.

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

24 Section 1. Section 3 of the act of January 14, 1952 (1951
25 P.L.1965, No.550), known as the Fuel Use Tax Act, is amended to

1 read:

2 Section 3. Application for License; Licensing of Dealer-
3 Users[; Bond or Deposit of Collateral Securities].--(a) On and
4 after the effective date of this act, it shall be unlawful for
5 any dealer-user to engage in or thereafter begin to engage in
6 the use or sale and delivery of fuels within this Commonwealth,
7 unless a license shall have been issued to him as hereinafter
8 prescribed.

9 Penalty.--Each day in which any dealer-user shall engage in
10 the use of fuels within this Commonwealth, without a license, as
11 required by this act, shall constitute a separate offense and he
12 shall, upon summary conviction thereof before a magistrate, be
13 sentenced to pay a fine of one hundred dollars (\$100) and costs
14 of prosecution or to undergo imprisonment for not more than
15 thirty (30) days for each offense, or both.

16 (b) Every person desiring to operate as a dealer-user shall
17 file an application for a license with the department. The
18 application for license shall be made upon a form prescribed,
19 prepared and furnished by the department upon request, and shall
20 set forth the name under which the applicant transacts or
21 intends to transact business, the location of his principal
22 place of business in this Commonwealth, and such other
23 information as the department may require. If the applicant is
24 an association, the application shall set forth the names and
25 addresses of the persons constituting the association, and if a
26 corporation, the names and addresses of the principal officers
27 thereof and any other information prescribed by the department
28 for the purpose of identification. The application shall be
29 signed and verified by oath or affirmation by the applicant, if
30 a natural person; in the case of an association, by a member or

1 partner thereof; and in the case of a corporation, by the
2 executive officers thereof or person specifically authorized by
3 the corporation to sign the application, to which shall be
4 attached written evidence of their authority.

5 (c) Upon approval of the application [and the bond
6 hereinafter required], the department shall grant and issue to
7 each dealer-user a license or licenses, which shall at all times
8 be posted conspicuously at all places where fuels are stored for
9 use or for sale and delivery. Licenses shall not be assignable
10 or transferable and shall be valid only for the dealer-user in
11 whose name issued. Licenses shall be displayed for
12 identification purposes by dealer-users to any officer of the
13 Pennsylvania State Police upon request. Licenses shall continue
14 permanently in effect unless surrendered or suspended or revoked
15 for cause by the secretary.

16 Penalty.--Any person assigning or attempting to assign or
17 transfer a license, or who shall fail to display his license as
18 required herein, shall, upon summary conviction before a
19 magistrate, be sentenced to pay a fine of one hundred dollars
20 (\$100) for each offense and costs of prosecution or to undergo
21 imprisonment for not more than thirty (30) days for each
22 offense, or both.

23 [(d) A license shall not be granted and issued until the
24 person applying therefor has filed with the department a surety
25 bond, payable to the Commonwealth of Pennsylvania, in such
26 amount as shall be fixed by the department, except that the
27 amount shall never be less than five hundred dollars (\$500).
28 Every such bond shall have as surety a duly authorized surety
29 company approved by the Insurance Department of this
30 Commonwealth and signed by a resident Pennsylvania agent of the

1 surety, conditioned that the dealer-user shall faithfully comply
2 with the provisions of this act during the effective period of
3 his license. The department may require any dealer-user to
4 furnish such additional surety bond as shall be necessary to
5 secure at all times the payment by him to the Commonwealth of
6 all fuel taxes, penalties, interest, fines, uncollectible check
7 fees and Attorney General's fees due by him.

8 For the purpose of determining whether an existing bond or
9 bonds are sufficient, the department may at any time by a
10 written notice require any dealer-user to furnish a financial
11 statement in such form as it may prescribe. Upon failure of any
12 dealer-user to furnish a financial statement within thirty (30)
13 days of such written notice, the department may forthwith
14 suspend or revoke the license or licenses issued to him and
15 shall collect all fuel taxes, penalties, interest, fines,
16 uncollectible check fees and Attorney General's fees due by him.

17 Any surety on a bond furnished by a dealer-user, as provided
18 herein, shall be released and discharged from any and all
19 liability to the Commonwealth accruing on such bond after the
20 expiration of sixty (60) days from date upon which the surety
21 shall have lodged with the department a written request to be
22 released and discharged; but this provision shall not operate to
23 relieve, release or discharge the surety from any liability
24 already accrued or which shall accrue before the expiration of
25 the sixty (60) day period. The department shall promptly after
26 receiving such request notify the dealer-user who furnished the
27 bond, and unless the dealer-user shall, on or before the
28 expiration of the sixty (60) day period, file with the
29 department a new bond with corporate surety approved by the
30 Insurance Department of this Commonwealth, the department shall

1 forthwith cancel the dealer-user's license or licenses. Wherever
2 a new bond shall be furnished by the dealer-user as aforesaid,
3 the department shall cancel and surrender the original bond of
4 the dealer-user as soon as it shall be satisfied that all
5 liability under the original bond has been fully discharged.

6 (e) Any person required by the provisions of this section to
7 file a surety bond may, in lieu thereof, deposit with the State
8 Treasurer negotiable or assigned bonds which are direct
9 obligations of the United States Government or of the
10 Commonwealth of Pennsylvania, the par value thereof to be of the
11 amount of the surety bond required of such person, as collateral
12 guarantee of payment of all liabilities accruing under the
13 provisions of this act. The State Treasurer shall issue to such
14 person and to the Department of Revenue a certificate of such
15 deposit. The said securities shall be retained by the State
16 Treasurer after the termination of the license of such person,
17 whether by his own act or the action of the department, and such
18 securities shall not be released from any liability to the
19 Commonwealth already accrued or which shall accrue prior to the
20 issuance of certification by the department that all fuel taxes,
21 penalties, interest, fees, fines, uncollectible check fees and
22 Attorney General's fee have been paid. The department shall
23 furnish the State Treasurer with a copy of such certification
24 and authorize the return of said securities by the State
25 Treasurer to the owner.

26 (f) Upon the surrender of revocation for cause of the
27 license of any dealer-user, the department shall return surety
28 bonds for cancellation or deposits made in accordance with the
29 provisions of this section only after it is satisfied that all
30 fuel taxes, penalties, interest, fees and fines due the

1 Commonwealth under the terms of the bond and the provisions of
2 this act have been paid.]

3 Section 2. This act shall take effect in 60 days.