

*Route **18049. Beginning at the intersection of L. R. 18040 and T. R. 317, thence in a northeasterly direction along T. R. 317 to the Chapman Township-Grugan Township line, a distance of about 2.3 miles in Chapman Township, Clinton County.*

*Route ***18050. Beginning at the Chapman Township-Grugan Township line, thence in a northeasterly direction along T. R. 317 to the intersection of T. R. 317 and L. R. 266 a distance of about 3.0 miles in Grugan Township, Clinton County.*

Section 2. The highways established as State highways under the provisions of this act may be taken over for construction and maintenance at any time subsequent to the final enactment of this act, when the same shall become effective, and shall be taken over not later than January 1, 1958.

Section 3. This act shall take effect immediately.

APPROVED—The 6th day of May, A. D. 1957.

GEORGE M. LEADER

No. 51

AN ACT

Amending the act of March 6, 1956 (P. L. 1228), entitled, as amended, "An act to provide revenue for Commonwealth purposes by imposing a tax on the sale, use, storage, rental or consumption of certain tangible personal property and utility services herein defined as tangible personal property; providing for licenses, reports and payment of tax, interest and penalties, assessments, collections, liens, reviews and appeals; conferring powers and imposing duties upon the Department of Revenue, public officers, manufacturers, wholesalers, retailers, corporations, partnerships, associations and individuals and making an appropriation," changing the procedure for the collection of the tax and the administration of the act, providing appeals and refunds, changing and clarifying definitions, excluding from tax the sale at retail or use of coal, changing and imposing penalties, and providing for bonds.

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

Selective Sales
and Use Tax
Act.

Clause (f),
section 2, act of
March 6, 1956,
P. L. 1228,
added May 24,
1956, P. L. 1707,
amended by
adding a new
clause (5).

Section 1. Clause (f) of section 2, act of March 6, 1956 (P. L. 1228), known as the "Selective Sales and Use Tax Act," added May 24, 1956 (P. L. 1707), is amended by adding, at the end, a new clause to read:

Section 2. Definitions.—The following words, terms and phrases when used in this act shall have the mean-

** "18049" omitted in original.

*** "18050" omitted in original.

ing ascribed to them in this section, except where the context clearly indicates a different meaning:

* * * * *

(f) "Purchase Price"

* * * * *

(5) *With respect to the tax imposed by subsection (b) of section 201 upon any tangible personal property originally purchased by the user of such property six months or longer prior to the first taxable use of such property within the Commonwealth, such user may elect to pay tax on a substituted base determined by considering the purchase price of such property for tax purposes to be equal to the prevailing market price of similar personal property at the time and place of such first use within the Commonwealth. Such election must be made by filing a notice thereof in the form specified by the department and reporting such tax liability and paying the proper tax due plus all accrued penalties and interest, if there be any, within one year of the due date of such report and payment, as provided for by subsections (a) and (c) of section 520 of this act.*

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Section 2. Section 203 of the act, added May 24, 1956 (P. L. 1707), is amended by adding, at the end thereof, a new clause to read:

Section 203. Exclusions from Tax.—The tax imposed by section 201 shall not be imposed upon

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(m) *The sale at retail or use of coal.*

Section 3. Section 541 of the act, amended April 4, 1957 (Act No. 24), is amended to read:

Section 541. Mode and Time of Assessment.—(a) Underpayment of Tax. Within a reasonable time after any return is filed, the department shall examine it and, if the return shows a greater tax due or collected than the amount of tax remitted with the return, the department shall [forthwith assess] *issue an assessment for the difference. The difference shown on the assessment, together with an addition of three percent of such difference, shall be paid to the department within ten days after a notice of the assessment has been mailed to the taxpayer.*

(b) Understatement of Tax. If the department determines that any return or returns of any taxpayer understates the amount of tax due, it shall [assess] *determine the proper amount and shall [determine] ascertain the difference between the amount of tax shown in the return and the amount [assessed] determined, such difference being hereafter sometimes referred to as the "defi-*

Section 203 of the act, added May 24, 1956, P. L. 1707, amended by adding a new clause (m).

Section 541 of the act, amended April 4, 1957, Act No. 24, further amended.

ciency." *A notice of assessment for the deficiency shall then be sent to the taxpayer. Such notice shall set forth in a reasonable manner the basis of the assessment. The deficiency shall be paid to the department within thirty days after a notice of the assessment thereof has been mailed to the taxpayer.*

(c) *Failure to File Return.* In the event that any taxpayer fails to file a return required by this act, the department may make an estimated assessment (based on [the best] information available) of the proper amount of tax owing by the taxpayer [and the]. *A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within thirty days after a notice of such estimated assessment has been mailed to the taxpayer.*

(d) [Notice of Assessment or Estimated Assessment. The notice of any assessment or estimated assessment shall set forth explicitly and in detail the amount of such assessment or estimated assessment and the grounds for making the assessment or estimated assessment.] *Authority to Establish Effective Rates by Business Classification.* *The Department is authorized to make the studies necessary to compute effective rates by business classification, based upon the ratio between the tax required to be collected and taxable sales and to use such rates in arriving at the apparent tax liability of a taxpayer.*

Any assessment based upon such rates shall be prima facie correct, except that such rate shall not be considered where a taxpayer establishes that such rate is based on a sample inapplicable to him.

Section 542 of
the act, amended
May 24, 1956,
P. L. 1707,
further amended.

Section 4. Section 542 of the act, amended May 24, 1956 (P. L. 1707), is amended to read:

Section 542. *Reassessment.*—Any taxpayer against whom an assessment is made may petition the department for a reassessment. Notice of an intention to file such a petition shall be given to the department [prior to the time the assessment becomes due and payable] *within thirty days of the date the notice of assessment was mailed to the taxpayer, except that the department for due cause may accept such notice within ninety days of the date the notice of assessment was mailed. A petition for reassessment shall thereafter be filed within thirty days of the receipt by the department of the notice of intention. Such petition shall set forth in reasonable detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit or affirmation that the facts contained therein are true and correct. An extension of time for filing the petition may be allowed for cause but in no case shall*

such extension exceed one hundred twenty days. The department shall hold such hearings as may be necessary for the purpose, at such times and places as it may determine, and each taxpayer who has duly [notified the department of an intention to file a] *filed such* petition for reassessment shall be notified by the department of the time when, and the place where, such hearing in his case will be held. [A petition for reassessment, if filed, shall set forth explicitly and in detail the grounds upon which the taxpayer claims that the assessment is erroneous or unlawful, in whole or in part, and shall be accompanied by an affidavit under oath or affirmation certifying to the facts stated in the petition.]

It shall be the duty of the department, within six months [after the hearing, or] after receiving a filed petition for reassessment, to dispose of the issue raised [at such hearing or by such filed petition. Notice of the action taken shall be given to the petitioner promptly after the date of reassessment by the department] *by such petition and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.*

Section 5. The act is amended by adding, after section 542, a new section to read:

Act of March 6, 1956, P. L. 1228, amended by adding a new section 542.1.

Section 542.1. Assessment to Recover Erroneous Refunds.—The department may, within two years of the granting of any refund or credit, or within the period in which an assessment could have been filed by the department with respect to the transaction pertaining to which the refund was granted, whichever period shall last occur, file an assessment to recover any refund or part thereof or credit or part thereof which was erroneously made or allowed.

Section 6. Section 543 of the act, amended May 24, 1956 (P. L. 1707), is amended to read:

Section 543 of the act, amended May 24, 1956, P. L. 1707, further amended.

Section 543. Review by Board of Finance and Revenue.—Within sixty days after the date of mailing of notice by the department of the [action taken] *decision* *on any petition for reassessment filed with it, [or after the department's failure to act within the time specified] the person against whom such assessment was made may, by petition, request the Board of Finance and Revenue to review such [action] *decision.* *The failure of the department to notify the petitioner of a decision within the time provided for by Section 542 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and*

* "of" in original.

Revenue within one hundred twenty days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed hereunder shall state specifically the reasons on which the petitioner relies, or shall incorporate by reference the petition for reassessment in which the reasons are stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true. The Board of Finance and Revenue shall act finally in disposing of petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department, upon the petition for reassessment, shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on the petition for reassessment, or it may reassess the tax due on such basis as it deems according to law. The board shall give notice of its action [by mail] to the department and to the petitioner.

Subsection (c), section 546, of the act, amended April 4, 1957, Act No. 24, further amended.

Section 7. Subsection (c) of section 546 of the act, amended April 4, 1957 (Act No. 24) is amended to read:

Section 546. Collection of Tax.— * * *

(c) Exemption Certificates. If the tax does not apply to the sale or lease of tangible personal property, the purchaser or lessee shall furnish to the vendor a certificate indicating that the sale is not legally subject to the tax. *The certificate shall be in substantially such form as the department may by regulation prescribe.* Where the tangible personal property is of a type which is never subject to the tax imposed or where the sale or lease is in interstate commerce, such certificate need not be furnished. Where [the identity of the purchaser or user is such that all transactions with such person are never] *a series of transactions are not subject to tax, [such] a purchaser or user may furnish the vendor with a single exemption certificate in substantially such form and valid for such period of time as the department may, by regulation, prescribe.* An exemption *certificate, which on its face discloses a valid basis of exemption, if taken in good faith, shall relieve the vendor from any liability for the tax.

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Act of March 6, 1956, P. L. 1228, amended by adding two sections 546.1 and 546.2.

Section 8. The act is amended by adding, after section 546, two new sections to read:

Section 546.1. Collection of Tax on Motor Vehicles, Trailers and Semi-Trailers.—Notwithstanding the provisions of section 546 (b) (1) of this act, tax due on the sale at retail of a motor vehicle, trailer or semi-

* "certificate" in original.

trailer by persons other than those registered with the department in "Dealer's Class" under the provisions of section 408 of the Vehicle Code of May 1, 1929 (P. L. 905) and the tax due upon the use of a motor vehicle, trailer or semi-trailer shall be collected by the department upon application to the department for an issuance of a certificate of title upon such motor vehicle, trailer or semi-trailer. The department shall not issue a certificate of title until the tax has been paid, or evidence satisfactory to the department has been given to establish that tax is not due.

Section 546.2. Precollection of Tax.—The department may, by regulation, authorize or require particular categories of vendors selling tangible personal property for resale to precollect from the purchaser the tax which such purchaser will collect upon making a sale at retail of such tangible personal property: Provided, however, That the department, pursuant to this section, may not require a vendor to precollect tax from a purchaser who purchases for resale more than one thousand dollars (\$1,000) worth of tangible personal property from such vendor per year. In any case in which a vendor has been authorized to prepay the tax to the person from whom he purchased the tangible personal property for resale such vendor so authorized to prepay the tax may, under the regulations of the department, be relieved from his duty to secure a license if such duty shall arise only by reason of his sale of the tangible personal property with respect to which he is, under authorization of the department, to prepay the tax. The vendor, on making a sale at retail of tangible personal property with respect to which he has prepaid the tax, must separately state at the time of resale the proper amount of tax on the transaction, and reimburse himself on account of the taxes which he has previously *prepaid. Should such vendor collect a greater amount of tax in any reporting period than he had previously prepaid upon purchase of the goods with respect to which he prepaid the tax, he must file a return and remit the balance to the Commonwealth at the time at which a return would otherwise be due with respect to such sales.

Section 9. Section 550 of the act is amended to read: Section 550 of the act amended.

Section 550. Refund or Credit for Overpayment.— [In] With respect to all taxes paid to a vendor or to the Commonwealth prior to April 5, 1957, in the case of any overpayment, the department, within the applicable period of limitations, may credit the amount of such overpayment against any liability in respect of the tax imposed by this act on the part of the person who made

* "paid" in original.

the overpayment, and shall refund any balance to such person.

Section 551 of the act, amended April 4, 1957, Act No. 24, repealed.

Act of March 6, 1956, P. L. 1228, amended by adding six sections 551, 552, 553, 554, 555 and 556.

Section 10. Section 551 of the act, amended April 4, 1957 (Act No. 24), is repealed.

Section 11. The act is amended by adding, after section 550, six new sections to read:

Section 551. Restriction on Refunds.—No refund shall be made under section 550 without the approval of the Board of Finance and Revenue.

Section 552. Refunds.—The department shall, pursuant to the provisions of sections 553 and 554, refund all taxes which have been erroneously collected or paid over to the department. Such refunds shall be made to the person, his heirs, successors, assigns or other personal representatives, who actually paid the tax: Provided, That no refund shall be made under this section with respect to any payment made by reason of that portion of an assessment with respect to which a taxpayer has filed a petition for reassessment pursuant to section 542 of this act.

Section 553. Refund Petition.—Except as provided for in section 556, the refund or credit of tax, interest or penalty erroneously collected or paid provided for by section 552 shall be made only where the person who has actually paid the tax files a petition for refund with the department within eighteen months of the actual payment of the tax to the Commonwealth. Such petition for refund must set forth in reasonable detail the grounds upon which the taxpayer claims that payment or collection was erroneous, in whole or in part, and shall be accompanied by an affidavit affirming that the facts contained therein are true and correct. The department may hold such hearings as may be necessary for the purpose at such times and places as it may determine, and each person who has duly filed a refund petition shall be notified by the department of the time when, and the place where, such hearing in his case will be held.

It shall be the duty of the department, within six months after receiving a petition for refund, to dispose of the issue raised by such petition, and mail notice of the department's decision to the petitioner: Provided, however, That the taxpayer and the department may, by stipulation, extend such disposal time by not more than six additional months.

Section 554. Review by Board of Finance and Revenue.—Within sixty days after the date of mailing of notice by the department of the decision upon a petition for refund filed with it, pursuant to section 553, the

petitioner may further petition the Board of Finance and Revenue to review the decision of the department. The failure of the department to notify the petitioner of its decision within the time provided for by section 553 shall act as a denial of such petition, and a petition for review may be filed with the Board of Finance and Revenue within one hundred twenty days of the date prior to which the department should have mailed to the petitioner its notice of decision. Every petition for review filed with the Board of Finance and Revenue under the provisions of this section shall incorporate by reference the petition for refund. The petitioner may, in his petition for review, elect to withdraw one or more grounds as set out in the original refund petition. The Board of Finance and Revenue shall act finally in disposing of such petitions filed with it within six months after they have been received. In the event of the failure of the board to dispose of any petition within six months, the action taken by the department upon the petition for refund shall be sustained. The Board of Finance and Revenue may sustain the action taken by the department on a petition for refund, or it may redetermine whether a lesser or greater amount of refund is proper. Under no circumstances may the Board of Finance and Revenue authorize a refund greater than that originally applied for by the petitioner. The board shall give notice of its action to the department and to the petitioner.

Section 555. Appeal to the Court of Common Pleas of Dauphin County.—Any person aggrieved by the decision of the Board of Finance and Revenue under section 554, or by the board's failure to act upon a petition for review within six months may, within sixty days, appeal to the Court of Common Pleas of Dauphin County from the decision of the board or of the department, as the case may be, in the manner now or hereafter provided for by law for appeals in the case of tax settlements.

Section 556. Extended Time for Filing Special Petition for Refund.—Any party to a transaction who has paid tax by reason of a transaction with respect to which the department is assessing tax against another person may, within six months after the filing by the department of the assessment against such other person, file a special petition for refund, notwithstanding his failure to file a regular petition within eighteen months of the payment. The provisions of sections 553, 554 and 555 shall be applicable to such special petition for refund, except that the department need not act on such petition until there is a final determination as to the propriety of the assessment filed against the other party to the transaction. Where a petition is filed under this pro-

vision in order to take advantage of the extended period of limitations, overpayments by the petitioner shall be refunded but only to the extent of the actual tax (without consideration of interest and penalties) paid by the other party to the transaction. The purpose of this section is to avoid duplicate payment of tax where a determination is made by the department that one party to a transaction is subject to tax, and another party to the transaction has previously paid tax with respect to such transaction and, as such, this section shall be construed as extending right beyond that provided for by section 553, and not to limit such other section.

Subsections (a) and (b), section 571, section 572, and subsections (a), (c) and (e) section 581 of the act, amended April 4, 1957, Act No. 24, further amended.

Section 12. Subsections (a) and (b) of section 571, section 572 and subsections (a), (c) and (e) of section 581 of the act amended April 4, 1957 (Act No. 24), are amended to read:

Section 571. Additions to Tax.—(a) Failure to File Return. In the case of failure to file any return required by section 501 on the date prescribed therefor (determined with regard to any extension of time for filing), *and in the case in which a return filed after July 1, 1957, understates the true amount due by more than fifty percent*, there shall be added to the amount [required to be shown as tax on such return] *of tax actually due* five percent of the amount of such tax if the failure to file a proper return is for not more than one month with an additional five percent for each additional month, or fraction thereof, during which such failure continues, not exceeding twenty-five percent in the aggregate. In [all cases the amount added shall be a minimum of two dollars (2)] *every such case at least two dollars (\$2.00) shall be added.*

(b) [Failure to Pay Tax through Negligence or Fraud.

(1) If any part of any deficiency is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), there] *Addition for Understatement.* There shall be added to [the tax amount] *every assessment under subsection (b) of section 541 an addition* equal to five per cent of the [underpayment. The mere existence of a deficiency shall not constitute such negligence or intentional disregard of rules and regulations] *amount of the understatement and no addition to the tax shall be paid under section 541 (a).*

[(2) If any part of any deficiency is due to fraud, there shall be added to the tax an amount equal to fifty percent of the deficiency. This amount shall be in lieu of any amount determined under paragraph (1) of this subsection.]

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Section 572. *Penalties.*—(a) Penalty Assessed as Tax. The penalties, *additions, interest* and liabilities provided by this act shall be paid upon notice and demand by the department, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this act to “tax” imposed by this act shall be deemed also to refer to the penalties, *additions, interest* and liabilities provided by this Part.

(b) *Attempt to Evade or Defeat Tax.* Any person who wilfully attempts, in any manner, to evade or defeat the tax imposed by this act, or the payment thereof, or to assist any other person to evade or defeat the tax imposed by this act, or the payment thereof, or to receive a refund improperly, shall, in addition to other penalties provided by law, be liable for a penalty equal to one-half of the total amount of the tax evaded.

Section 581. Keeping of Records.—(a) General Provision. Every person liable for any tax imposed by this act, or for the collection thereof, shall keep the records, render such statements, make the returns and comply with such rules and regulations as the department may, from time to time, prescribe, [in so far as the information which may be required is within the knowledge of the person required to make such return] *regarding matters pertinent to his business.* Whenever in the judgment of the department it is necessary, it may require any person, by notice served upon such person, or by regulations, to make such returns, render such statements or keep such records as the department deems sufficient to show whether or not such person is liable to pay or collect tax under this act.

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(c) Records of Non-Residents. A non-resident who does business in this Commonwealth as a retail dealer shall keep adequate records of such business or businesses and of the tax due with respect thereto, which records shall at all times be retained within this Commonwealth unless retention outside the Commonwealth is authorized by the department. No taxes collected from purchases shall be sent outside the Commonwealth without the written consent of, and in accordance with conditions prescribed by the department. *The department may require a taxpayer who desires to retain records or tax collections outside the Commonwealth to assume reasonable out-of-state audit expenses.*

* * * * *

(e) Other Methods. In those instances where a vendor gives no sales memoranda or uses registers showing only total sales, the vendor must adopt some method

of segregating tax from sales receipts [or] *and* keep records showing such segregation, [for example:

(1) Maintaining a separate container near each cash register or cash box in which the tax collected is deposited. A record of the amount of tax removed from such container must be preserved along with the record of sales proceeds from such register or cash box.

(2) Maintaining a tabulator or tax record sheet in conjunction with the register or cash box to show the amount of tax collected and deposited in the register or cash box] *all in accordance with proper accounting and business practices.*

A vendor may apply to the department for permission to use a collection and recording procedure which will show such information as the law requires with reasonable accuracy and simplicity. Such application must contain a detailed description of the procedure to be adopted. Permission to use the proposed procedure is not to be construed as relieving the vendor from remitting the full amount of tax collected [when the tax has been segregated by the vendor]. The department may revoke such permission upon thirty days' notice to the vendor.

Section 585 of the act, amended May 24, 1956, P. L. 1707 and April 4, 1957, Act No. 24, further amended.

Section 13. Section 585 of the act, amended May 24, 1956 (P. L. 1707), and April 4, 1957 (Act No. 24), is amended to read:

Section 585. Bonds.—(a) Taxpayer to File Bond. Whenever the department, in its discretion, deems it necessary to protect the revenues to be obtained under the provisions of this act, it may require any non-resident natural person or any foreign corporation, either not authorized to do business within this Commonwealth or not having an established place of business therein and subject to the tax imposed by Section 201 of this act, to file a bond issued by a surety company authorized to do business in this Commonwealth and approved by the insurance commissioner as to solvency and responsibility, in such amounts as it may fix, to secure the payment of any tax or penalties due, or which may become due, from such natural person or corporation. *The department may also require such a bond of any person petitioning the department for reassessment, in the case of any assessment over five hundred dollars (\$500) or where it is of the opinion that the ultimate collection is in jeopardy. The department may, for a period of three years, require such a bond of any person who has on three or more occasions within a twelve month period either filed a return or made payment to the department more than thirty days late. In the event that the department determines that a taxpayer is to*

file such a bond, it shall give notice to such taxpayer to that effect, specifying the amount of the bond required. The taxpayer shall file such bond within five days after the giving of such notice by the department unless, within such five days, the taxpayer shall request, in writing, a hearing before the Secretary of Revenue or his representative at which hearing the necessity, propriety and amount of the bond shall be determined by the Secretary or such representative. Such determination shall be final and shall be complied with within fifteen days after [the taxpayer is given] notice thereof *is mailed to the taxpayer.*

(b) Securities in Lieu of Bond. In lieu of the bond required by this section, securities approved by the department, or cash in such amount as [he] *it* may prescribe, may be deposited. Such securities or cash shall be kept in the custody of the department who may, at any time without notice to the depositor, apply them to any tax and/or interest or penalties due, and for that purpose the securities may be sold by the department at public or private sale, upon five days written notice to the depositor.

(c) *Failure to File Bond. The department may file a lien pursuant to section 548 against any taxpayer who fails to file a bond when required to do so under this section. All funds received upon execution of the judgment on such lien shall be refunded to the taxpayer with three percent interest should a final determination be made that he does not owe any payment to the department.*

Section 14. This act shall take effect immediately and the amendment to section 203 of the "Selective Sales and Use Tax Act," shall be retroactive to March 6, 1956. Effective dates.

APPROVED—The 9th day of May, A. D. 1957.

GEORGE M. LEADER

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No. 52

AN ACT

Amending the act of June 1, 1956 (P. L. 1944), entitled "An act providing a permanent allocation of a part of the fuels and liquids fuels tax proceeds to cities, boroughs, incorporated towns and townships, for their road, street and bridge purposes; conferring powers and imposing duties on local officers and the Department of Highways; and making an appropriation out of the Motor License Fund; and repealing existing legislation," further defining the formula used to determine the amount of payments to be made to the political subdivisions.