

No. 1981-35

## AN ACT

SB 161

Amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, requiring the insurance identification card to be in the possession of the operator, further providing for safety requirements for towed vehicles, imposing a franchise tax on oil companies for the maintenance, construction and reconstruction of highways and bridges and providing for legislative oversight.

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

Section 1. Chapter 17 of Title 75, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended by adding a subchapter to read:

CHAPTER 17  
FINANCIAL RESPONSIBILITY

\* \* \*

SUBCHAPTER C  
PROOF OF INSURANCE

Sec.

1751. Insurance identification card required while driving.

1752. Insurance identification card to be exhibited on demand.

§ 1751. Insurance identification card required while driving.

It is a summary offense for any person to drive or for an owner knowingly to permit to be driven upon any highway any vehicle of a type required to be insured under sections 104 and 110, act of July 19, 1974 (P.L.489, No.176), known as the "Pennsylvania No-fault Motor Vehicle Insurance Act," without an insurance identification card.

§ 1752. Insurance identification card to be exhibited on demand.

(a) Carrying and exhibiting card.—Every insurance identification card shall, at all times while the vehicle is being driven upon a highway, be in the possession of the person driving or in control of the vehicle or carried in the vehicle and shall be exhibited upon demand of any police officer.

(b) Production to avoid penalty.—No person shall be convicted of violating this section or section 1751 (relating to insurance identification card required while driving) if the person produces at the office of the issuing authority or at the office of the arresting police officer within five days of the violation an insurance identification card valid in this Commonwealth at the time of the violation or other reasonable proof of insurance the department may prescribe.

Section 2. Subsection (e) of section 4905 of Title 75 is amended to read:

§ 4905. Safety requirements for towed vehicles.

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(e) Obstructed lighting equipment.—Whenever the rear running lights, stop lights, turn signals or hazard warning lights required by the provisions of Chapter 43 (relating to lighting equipment) are obstructed by the load on a vehicle or by a towed vehicle or its load, lighting equipment shall be displayed on the rear of the towed vehicle or load equivalent to the obstructed lights or signals, *except in the case of implements of husbandry displaying the slow-moving vehicle emblem and operating between sunrise and sunset.*

Section 3. Title 75 is amended by adding chapters to read:

CHAPTER 95  
OIL COMPANY FRANCHISE TAX FOR HIGHWAY  
MAINTENANCE AND CONSTRUCTION

Sec.

9501. Definitions.

9502. Imposition of tax.

9503. Reports and payment of tax.

9504. Timely mailing treated as timely filing and payment.

9505. Extension of time to file reports.

9506. Administration and enforcement.

9507. Interstate cooperation in collecting tax.

9508. Assessment and appeals.

9509. Retention of records.

9510. Penalties.

9511. Allocation of proceeds.

9512. Severability of provisions.

§ 9501. Definitions.

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

“Consideration.” All proceeds received, whether in cash, credits or property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services, or other costs, interest or discount allowed, or any other expense whatsoever, except that deductions are allowed for returned merchandise.

“Department.” The Department of Revenue of the Commonwealth.

“Motor vehicle.” All vehicles, engines, machines or mechanical contrivances which are propelled by internal combustion engines or motors.

“Oil company.” Every corporation, association, joint-stock association, partnership, limited partnership, copartnership, natural individual or individuals, and any business conducted by a trustee or trustees wherein evidence of ownership is evidenced by certificate or written instrument, formed for or engaged in the sale or the importation of petroleum products within this Commonwealth.

“Person.” Any oil company subject to tax under this chapter.

“Petroleum products.” Any product of the industrial processing of crude oil and its fractionation products manufactured or refined or used for the generation of power used in an internal combustion engine for the generation of power to propel motor vehicles of any kind or character on the public highways. Petroleum products include but are not limited to gasoline, diesel fuel, kerosene, propane and any other product of crude oil used for such purpose. Petroleum products do not include any product used for residential heating purposes or in the generation of electricity by a public utility, rural electric association or municipality.

“Petroleum revenue.” All consideration derived from the first sale of petroleum products otherwise subject to liquid fuels taxes to wholesale or retail dealers in this Commonwealth for marketing and distribution or to a direct user. In the event that the consideration derived from the sale, to a wholesale dealer includes Federal gasoline taxes, such taxes shall not be part of the petroleum revenue. If no consideration is received or if the person owned or controlled by the selling entity or to a division within the selling entity does not reflect the consideration which would have been received in an arm’s length transaction with an unrelated person, then the selling entity shall be deemed to have received from such sale revenue equal to the consideration it would have received in an arm’s length transaction with an unrelated person. Receipts from the sale of petroleum products are allocable to this Commonwealth if the property is delivered or shipped to a purchaser located within this Commonwealth regardless of the F.O.B. point or other conditions of the sale. The importation of petroleum products into this Commonwealth upon which this tax has not been imposed or collected shall constitute a sale within this Commonwealth and the importing purchaser shall be deemed an oil company for the purposes of this chapter. Subsequent exportation of these imported products from this Commonwealth shall constitute a deduction from taxable revenue.

§ 9502. Imposition of tax.

(a) General rule.—Every oil company incorporated or organized now or hereafter by or under any law of this Commonwealth, or of any other state, territory or by the United States or any foreign government or dependency, and doing business in this Commonwealth, shall pay an excise tax of 35 mills upon each dollar of its petroleum revenues for the privilege of exercising its corporate franchise or of doing business, or of employing capital, or of owning or leasing property in this Commonwealth in a corporate or organized capacity, or of maintaining an office in this Commonwealth, or of having employees in this Commonwealth, for all or any part of any calendar year.

(b) Other taxes unaffected.—The tax imposed by this chapter is in addition to all other taxes imposed by this chapter or any other statute and shall not be permitted as a deduction in calculating any other tax imposed by the Commonwealth.

(c) **Preemption of local taxes.**—The tax imposed by this chapter shall automatically preempt any like tax or any tax on the privilege of processing or refining any petroleum product taxable under this chapter or any other refined product of crude oil imposed by any political subdivision of this Commonwealth. This preemption shall not extend to any local, personal or real property tax of general application or to any tax imposed by the Commonwealth.

(d) **Proof of use for nontaxable purpose.**—The department may require purchasers of petroleum products to provide the selling oil company with documentation in such form and under such terms and conditions as the department may prescribe to substantiate any portion of its purchases which are or will be used for a nontaxable purpose.

(e) **Absence of proof of use for nontaxable purpose.**—If at the time of a sale or importation of petroleum products by an oil company it cannot be reasonably determined whether the products will be used for a taxable purpose, it shall be presumed that the products are being used for a taxable purpose. The department may provide, in such form and under such terms as it may prescribe, a credit against any tax due and payable for any subsequent month upon submission to the department of such proof as it may require that any products presumed taxable were ultimately used for a nontaxable purpose.

(f) **Change to use for taxable purpose.**—Any purchaser of petroleum products for a nontaxable purpose which provides documentation to an oil company pursuant to subsections (d) and (e) and which subsequently sells or uses those products for a taxable purpose shall be deemed an oil company for the purposes of this chapter.

(g) **Credit in absence of proof of nontaxable purpose.**—The department may provide, in any case in which the purchaser is unable to provide documentation proving that petroleum products are used for a nontaxable purpose, for the payment of a credit based on the average wholesale price of petroleum products determined pursuant to regulations adopted by the department.

(h) **False information concerning product use.**—Any purchaser from an oil company subject to tax under this chapter which intentionally provides an oil company with false or fraudulent proof of the ultimate use of petroleum products, which enables that oil company to obtain a credit or exemption it was not entitled to, or who directly receives a credit for taxes paid, shall be liable to pay to the department 200% of the credit so obtained, plus interest as provided in section 9503(c) (relating to reports and payment of tax).

(i) **Election to be taxed as oil company.**—Any purchaser or user of petroleum products may, upon application to and approval by the department, elect to be deemed an oil company for the purposes of this chapter and to pay the taxes imposed by this chapter. Any purchaser or user electing to be taxed as an oil company may acquire petroleum products without the imposition of tax upon the supplier of the petroleum products.

(j) **Limitation on collection of tax.**—The tax imposed by this chapter shall be collected once on any petroleum products sold or used in this Commonwealth.

(k) **Motor carriers road tax.**—The tax imposed by this chapter shall be included as part of the tax currently in effect for calculating credits and taxes payable pursuant to the act of June 19, 1964 (P.L.7, No.1), known as the “Motor Carriers Road Tax Act,” based on the average wholesale price of petroleum products determined pursuant to regulations adopted by the department.

§ 9503. **Reports and payment of tax.**

(a) **Monthly reports.**—For the purpose of ascertaining and verifying the amount of tax payable under this chapter, it shall be the duty of every person, liable to pay tax under this chapter, on or before the next to the last business day of each month, to transmit to the department, upon a form prescribed, prepared and furnished by the department, a report, under oath or affirmation, of tax due under the provisions of this chapter for the preceding month. The report shall set forth such information as the department may prescribe.

(b) **Payment of tax.**—Every person making or required to make a monthly report shall, at the time of making every report required by this section, compute and pay to the department the tax due for the preceding month.

(c) **Underpayments and overpayments.**—The amount of all taxes, imposed under the provisions of this chapter, not paid on or before the time as provided in this section, shall bear interest at the rate of 1-1/2% per month from the date they are due and payable until paid. Any person may pay the full amount of such tax, or any part thereof, together with interest due to the date of payment, without prejudice to its right to present and prosecute a petition for review, or an appeal to court. If it be thereafter determined that such taxes were overpaid, the department shall enter a credit to the account of such person, which may be used by it in the manner prescribed by law.

(d) **Violation of reporting requirements.**—If any person shall neglect or refuse to make any report as required in this section, or shall knowingly make any false report, 15% of the amount of the tax shall be added by the department to the tax determined to be due as an additional tax, and such amounts added to the tax shall bear interest as provided in subsection (c).

§ 9504. **Timely mailing treated as timely filing and payment.**

(a) **General rule.**—Notwithstanding the provisions of any State tax law to the contrary, whenever a report or payment of all or any portion of a State tax is required by law to be received by the department or other agency of the Commonwealth on or before a day certain, the person shall be deemed to have complied with such law if the letter transmitting the report or payment of such tax which has been received by the department is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(b) Evidence of mailing.—For the purposes of this chapter, presentation of a receipt indicating that the report or payment was mailed by registered or certified mail on or before the due date shall be evidence of timely filing and payment.

§ 9505. Extension of time to file reports.

The department may, upon application made to it, in such form as it shall prescribe, on or prior to the last day for filing any monthly report, and upon proper cause shown, grant to the person, required to file such report, an extension of not more than 30 days within which such report may be filed, but the amount of tax due shall, in such cases, nevertheless, be subject to interest and additional tax from the due dates and at the rates fixed by this chapter.

§ 9506. Administration and enforcement.

(a) General rule.—The department is hereby charged with the enforcement of the provisions of this chapter, and is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations, not inconsistent with this chapter, relating to any matter or thing pertaining to the administration and enforcement of the provisions of this chapter and the collection of taxes, penalties and interest imposed by this chapter. The department shall have such rules and regulations printed and shall distribute them to any person upon request.

(b) Examinations and investigations.—The department is hereby authorized to examine the books, papers and records and to investigate the character of the business of any person in order to verify the accuracy of any report made, or if no report was made by such person, to ascertain and settle the tax imposed by this chapter. Every such person is hereby directed and required to give to the department the means, facilities and opportunities for such examinations and investigations, as are hereby provided and authorized. Any information gained by the department, as a result of any returns, investigations or verifications required to be made by this chapter, shall be confidential except for official purposes and any person divulging such information shall be guilty of a misdemeanor of the third degree and, upon conviction, shall be sentenced to pay a fine of not less than \$100 or more than \$1,000 or to undergo imprisonment for not more than six months, or both. The department shall by regulation define official purposes for the use of such information.

(c) Liability of county for costs.—Whenever the department shall in good faith institute legal proceedings for any violations of the provisions of this chapter and for any reason shall fail to recover costs of record, such costs shall be a charge upon the proper county, as shall such costs in the event defendant is imprisoned for failure to pay fine or costs, or both, and shall be audited and paid as are costs of like character in said county.

(d) Other powers of department preserved.—The powers, conferred by this chapter upon the department, relating to the administration or enforcement of this chapter, shall be in addition to, but not exclusive of,

any other powers heretofore or hereafter conferred upon the department by law.

(e) Special investigators.—Such employees of the department as are designated as special investigators and who carry identification indicating such capacity, are hereby declared to be peace officers of this Commonwealth, are hereby given police power and authority throughout this Commonwealth to arrest on view without warrant any driver of a motor vehicle engaged in the sale or transportation of petroleum products upon which the required taxes have not been paid or of any other violation of any provision of this chapter and shall have the power and authority upon probable cause that any such violation may have occurred to search and seize without warrant or process any motor vehicle so operated. Such vehicle and its contents shall be deemed contraband and be subject to immediate forfeiture proceedings instituted by the department pursuant to procedures adopted by regulation.

§ 9507. Interstate cooperation in collecting tax.

(a) General rule.—The Governor, or his authorized representative, is hereby vested with authority to confer with the Governor and the authorized representatives of other states with respect to reciprocal collection between the Commonwealth and such other states of the tax imposed by this chapter.

(b) Joint actions and agreements.—The Governor, or his representative, is authorized to join with such authorities of other states to conduct joint investigations, exchange information, hold joint hearings and enter into compacts or interstate agreements with such other states to accomplish uniform reciprocal collection between those states who are parties to any compact or interstate agreement and the Commonwealth of the tax imposed by this chapter.

§ 9508. Assessment and appeals.

(a) Assessment.

(1) The department is authorized to make the inquiries, determinations and assessments of taxes imposed by this chapter.

(2) If the mode or time for the assessment of any tax is not otherwise provided for, the department may establish the same by regulations.

(3) In the event that any taxpayer fails to file a return required by this chapter, the department may make an estimated assessment (based on information available) of the proper amount of tax owing by the taxpayer. A notice of assessment in the estimated amount shall be sent to the taxpayer. The tax shall be paid within 90 days after a notice of such estimated assessment has been mailed to the taxpayer unless within such period the taxpayer has filed a petition for reassessment in the manner prescribed by this section.

(b) Petition for reassessment.—Promptly after the date of an assessment by the department, the department shall send by mail a copy thereof to the person against whom it was made. Within 90 days after the date upon which the copy of any such assessment was mailed, such

person may file with the department a petition for reassessment of such tax. Every petition for reassessment shall state specifically the reasons which the petitioner believes entitled him to such reassessment and it shall be supported by affidavit that it is not made for the purpose of delay and that the facts set forth therein are true. It shall be the duty of the department, within six months after receiving a petition for reassessment, to dispose of such petition for reassessment. Notice of the action taken upon any petition for reassessment shall be given to the petitioner promptly thereafter.

(c) **Petition for review.**—Within 90 days after the date of mailing of notice by the department of the action taken on any petition for reassessment filed with it, the person against whom the assessment was made may by petition request the Board of Finance and Revenue to review such action. The failure of the department to notify the petitioner of a decision within the six-months period provided for by this section shall act as a denial of such petition and a petition for review may be filed with the Board of Finance and Revenue within 120 days after written notice is mailed to petitioner that the department has failed to dispose of the petition within the six-months period prescribed by this section. Every petition for review filed under this section shall state specifically the reasons upon which the petitioner relies, or shall incorporate by reference the petition for reassessment in which such reasons shall have been stated. The petition shall be supported by affidavit that it is not made for the purpose of delay and that the facts therein set forth are true. The Board of Finance and Revenue shall act in disposition of such petitions filed with it within six months after they have been received and in the event of failure of said board to dispose of any such petition within six months, the action taken by the department upon the petition for reassessment shall be deemed sustained. The Board of Finance and Revenue may sustain the action taken on the petition for reassessment, or it may reassess the tax due upon such basis as it shall deem according to law. Notice of the action of the Board of Finance and Revenue shall be given by mail to the department and to the petitioner.

(d) **Appeals.**—Any person, or the Commonwealth, aggrieved by the decision of the Board of Finance and Revenue may appeal in the manner now or hereafter provided by law for appeals from decisions of said board in tax cases.

#### § 9509. Retention of records.

Each person shall maintain and keep for a period of three years after any report is filed under this chapter, such record or records of its business within this Commonwealth for the period covered by such report and other pertinent papers, as may be required by the department. The period of required record retention shall constitute a limitation on the institution of civil actions under this chapter.

#### § 9510. Penalties.

(a) **Retention of records.**—Any person violating any of the provisions of section 9509 (relating to retention of records) shall be guilty of a

misdemeanor of the third degree and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$1,000 or to undergo imprisonment for not more than six months, or both.

(b) False and fraudulent returns.—Any person who shall willfully make a false and fraudulent return of revenue made taxable by this chapter shall be guilty of willful and corrupt perjury and, upon conviction thereof, shall be subject to punishment as provided by law. Such penalty shall be in addition to any other penalties imposed by this chapter.

(c) Failure to file report or permit examination.—Any person who willfully fails, neglects or refuses to make a report or to pay the tax as prescribed in this chapter, or who shall refuse to permit the department to examine the books, papers and records of any person liable to pay tax under this chapter, shall be guilty of a misdemeanor of the third degree and, upon conviction thereof, shall be sentenced to pay a fine not exceeding \$2,500 or to undergo imprisonment not exceeding one year, or both. Such penalty shall be in addition to any other penalties imposed by this chapter.

§ 9511. Allocation of proceeds.

(a) Deposit in Motor License Fund.—All taxes, interest and penalties imposed by this chapter shall be deposited in the Motor License Fund.

(b) Basic allocation to municipalities.—An amount equal to 20% of the proceeds deposited in the Motor License Fund pursuant to this chapter is hereby appropriated out of the Motor License Fund to municipalities of this Commonwealth on the basis of and subject to the provisions of the act of June 1, 1956 (1955 P.L.1944, No.655), referred to as the Liquid Fuels Tax Municipal Allocation Law.

(c) Additional allocation to municipalities.—In addition, an amount is hereby appropriated out of the Motor License Fund to municipalities of this Commonwealth on the basis of and subject to the provisions of the act of June 1, 1956 (1955 P.L.1944, No.655), referred to as the Liquid Fuels Tax Municipal Allocation Law, equal to the amount that would be necessary to increase the portion of the liquid fuels and fuel use taxes distributed by such act to 20% of that which is deposited in the Motor License Fund from all liquid fuels and fuel use taxes.

(d) Allocation to cities of the first class.—In addition, an amount is hereby appropriated annually out of the Motor License Fund to cities of the first class equal to the difference between the increased amounts allocated to cities of the first class resulting from subsections (b) and (c) and 2% of oil company wholesale revenues from sales of gasoline delivered to retail outlets in cities of the first class, as determined by the Pennsylvania Secretary of Revenue in developing the official revenue estimate for the "oil company franchise tax for highway maintenance and construction." Such funds shall be used exclusively for maintenance, construction or reconstruction of highways and bridges within cities of the first class.

§ 9512. Severability of provisions.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter and the application of such provisions to other persons or circumstances shall not be affected thereby.

## CHAPTER 97 DEPARTMENT OF TRANSPORTATION PRODUCTIVITY

Sec.

9701. Legislative oversight.

§ 9701. Legislative oversight.

(a) Findings.—The General Assembly hereby finds that imposition of a tax on oil company revenues should provide the Department of Transportation with an annual growth in revenues which offsets the growth in highway maintenance and construction costs more effectively than the annual changes in revenues produced by the flat-rate tax on the retail price of gasoline and by the various other taxes and fees levied on behalf of the department. As a result of such a tax on oil company revenues, the Department of Transportation should have sufficient revenues to carry out necessary maintenance and construction activities with less frequent increases in highway taxes and fees than the General Assembly has enacted in recent years. One effect of less frequent requests for highway tax and fee increases could be a significant decrease in the ability of the General Assembly to oversee the activities of the Department of Transportation. Accordingly, the General Assembly finds that responsible legislative oversight requires ongoing monitoring of the department's activities and periodic indepth evaluations of its performance.

(b) Annual reports.—No later than 30 days after the effective date of this section, the department shall, upon request, provide to any member of the House of Representatives and to any member of the Senate a brief outline of the maintenance and construction program planned for that member's district during the 1981-1982 fiscal year. No later than 30 days before the beginning of the 1982-1983 fiscal year and each subsequent fiscal year, the department shall, upon request, provide to any member of the House of Representatives and to any member of the Senate a brief outline of the maintenance and construction program planned for that member's district during the upcoming fiscal year. No later than 30 days after the end of the 1981-1982 fiscal year and each subsequent fiscal year, the department shall, upon request, provide to any member of the House of Representatives and to any member of the Senate a brief outline of the reasons for any major deviations from the maintenance and construction program which had been planned for that member's district during that fiscal year.

(c) Performance audits.—During the 1983-1984 fiscal year, the Legislative Budget and Finance Committee shall conduct, or cause to be conducted, a performance audit of the department carried out in accord-

ance with the standards for performance and financial compliance auditing developed by the United States General Accounting Office. The performance audit shall determine whether the department is conducting authorized activities or programs in a manner consistent with accomplishing the objectives intended by the General Assembly and is conducting programs or activities and expending available funds in a faithful, efficient, economical and effective manner. The Legislative Budget and Finance Committee shall make a written report of the findings of the performance audit and shall submit a copy of that report to each member of the House of Representatives and each member of the Senate prior to enactment of a maintenance and construction budget for the department for the 1984-1985 fiscal year. During the 1989-1990 fiscal year and every six years thereafter, the Legislative Budget and Finance Committee shall conduct, or cause to be conducted, a performance audit of the department similar to the performance audit required by this subsection to be conducted during the 1983-1984 fiscal year.

Section 4. Section 3 of this act shall take effect immediately and shall be applicable to petroleum revenue received on and after the first day of the first full calendar month subsequent to enactment. The remainder of the act shall take effect in 60 days.

APPROVED—The 23rd day of June, A. D. 1981.

DICK THORNBURGH