

No. 1983-32

## AN ACT

## HB 10

Amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further defining "resident"; providing for the burden of proof of residency in proceedings regarding driving an unregistered vehicle; limiting the authority of the department to adopt certain regulations with respect to the emission inspection program; further providing for investigations by police officers; providing for the transfer of certain roads and highways from the Department of Transportation to municipalities; further providing for the oil company franchise tax; and imposing an additional tax.

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

Section 1. The definition of "resident" in section 102 of Title 75 of the Pennsylvania Consolidated Statutes is amended to read:

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

\* \* \*

"Resident." A person dwelling permanently or continuously for a period exceeding [30] 60 consecutive days within this Commonwealth, except that a person who regularly dwells in two or more states shall declare residence to be in any one of the states.

\* \* \*

Section 2. Section 1301 of Title 75 is amended to read:

§ 1301. Driving unregistered vehicle prohibited.

(a) *General rule.*—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 registered under this chapter which is not registered or for which the appropriate fee has not been paid when and as required in this title.

(b) *Proof of residency.*—*A person charged under this section has the burden of proving that he is a nonresident whenever he asserts a defense based on section 1303 (relating to vehicles of nonresidents exempt from registration). If he produces at the office of the issuing authority satisfactory proof that he is a nonresident within five days after being charged with a violation of this section, the issuing authority shall dismiss the charge.*

(c) *Penalty.*—*Any person violating this section commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$75.*

Section 3. Section 4706(g) of Title 75, added May 4, 1983 (P.L.4, No.3), is amended to read:

§ 4706. Prohibition on expenditures for emission inspection program.

\* \* \*

(g) Regulations.—The department shall promulgate such regulations as may be necessary to implement this section *but it shall not promulgate a regulation that would require safety inspection stations to also perform emission control inspections.*

\* \* \*

Section 4. Section 6308(b) of Title 75 is amended to read:

§ 6308. Investigation by police officers.

\* \* \*

(b) Authority of police officer.—[Any] *Whenever a police officer has articulable and reasonable grounds to suspect a violation of this title, he* may stop a vehicle, upon request or signal, for the purpose of inspecting the vehicle as to its equipment and operation, or vehicle identification number or engine number, or to secure such other information as the officer may reasonably believe to be necessary to enforce the provisions of this title.

\* \* \*

Section 5. Title 75 is amended by adding a chapter to read:

CHAPTER 92  
TRANSFER OF STATE HIGHWAYS

Sec.

- 9201. Definitions.
- 9202. Application of chapter.
- 9203. Description of functionally-local highways.
- 9204. Notice to municipalities.
- 9205. Mutual agreement.
- 9206. Publication of list of highways transferred.
- 9207. Restoration of highways.
- 9208. Periodic review by General Assembly.

§ 9201. Definitions.

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

“Functionally-local highways.” Highways and roads designated by the department for transfer to municipal responsibility.

“Municipality.” A county, city, borough, incorporated town or township.

§ 9202. Application of chapter.

This chapter applies to all State highways designated by the department as functionally-local highways.

§ 9203. Description of functionally-local highways.

Within six months of the effective date of this chapter, the department shall list and describe all functionally-local highways in this Commonwealth. Also, within six months of the effective date of this chapter and annually thereafter, the department shall list the proposed functionally-local highways

to be transferred, giving priority to highways located in counties in which State highways are in the poorest condition, as indicated in the road quality reports prepared in accordance with Chapter 453 of department regulations. The list and description shall be categorized by municipality and shall include a map showing location, length and type of roadway and right-of-way.

§ 9204. Notice to municipalities.

Upon preparation of the list and description provided for in section 9203 (relating to description of functionally-local highways), the department shall notify each municipality of the department's readiness to transfer to it all functionally-local highways located in the municipality. The notice shall include a copy of the department's highway description and map.

§ 9205. Mutual agreement.

No highway transfer shall occur between the department and an affected municipality unless the municipality agrees to the transfer of the described highway.

§ 9206. Publication of list of highways transferred.

The department shall, from time to time, certify to the Legislative Reference Bureau a list of highways transferred and the bureau shall cause the list to be published in the Pennsylvania Bulletin as a notice under 45 Pa.C.S. § 725(a)(3) (relating to additional contents of Pennsylvania Bulletin). The list shall also be certified to the office of recorder of deeds of the county in which the participating municipalities are located.

§ 9207. Restoration of highways.

(a) General rule.—The department and the affected municipality shall jointly determine whether any rehabilitative work is required to put the highway or road in a satisfactory condition. The rehabilitative work may be done by department or municipal forces, or by contract, as the parties shall agree. If the work is to be performed by the department or its contractors, the highway or road transfer shall not be effective until all agreed upon rehabilitative work has been completed.

(b) Funding.—All restoration work shall be paid from the State Highway Transfer Restoration Restricted Account within the Motor License Fund. No funds shall be allocated to municipalities for the maintenance of highways transferred under this chapter out of section 4 of the act of June 1, 1956 (1955 P.L.1944, No.655), referred to as the Liquid Fuels Tax Municipal Allocation Law, nor shall highways transferred under the provisions of this chapter be used to compute or determine the allocations of municipalities under that section.

(c) Public liability.—Upon transfer of any highway, the municipality shall assume the same public liability for the transferred highway as it assumes for other highways under municipal jurisdiction.

§ 9208. Periodic review by General Assembly.

Every two years the transportation committees of the House of Representatives and the Senate shall hold joint public hearings and jointly review the performance and effectiveness of the program of highway transfer established by this chapter. The committees shall make a joint report to the Speaker of the House of Representatives, the President pro tempore of the Senate and the House and Senate appropriations committees.

Section 6. The heading of Chapter 95, the definition of "petroleum revenue" in section 9501 and section 9502(a) of Title 75 are amended to read:

CHAPTER 95  
[OIL COMPANY FRANCHISE TAX] TAXES FOR HIGHWAY  
MAINTENANCE AND CONSTRUCTION

§ 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:

\* \* \*

"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 no case shall the consideration be deemed to be less than 90¢ or more than \$1.25 per gallon.* 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 "*oil company franchise tax for highway maintenance and construction*" which shall be an excise tax of [35] 60 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.

\* \* \*

Section 7. Section 9511(b), (c) and (d) of Title 75 are amended and subsections are added to read:

§ 9511. Allocation of proceeds.

\* \* \*

*(b) State Highway Transfer Restoration Restricted Account.—The amount of the proceeds deposited in the Motor License Fund pursuant to this chapter which, in fiscal year 1983-1984, is attributable to two mills of the tax imposed under section 9502(a) (relating to imposition of tax) and which, in fiscal year 1984-1985 and thereafter, is attributable to three mills of the tax, shall be deposited in the State Highway Transfer Restoration Restricted Account within the Motor License Fund, which account is hereby created. The funds deposited in the State Highway Transfer Restoration Restricted Account are hereby annually appropriated out of the account upon authorization by the Governor for expenditure on functionally-local highways transferred under Chapter 92 (relating to transfer of State highways) or under section 222 of the act of June 1, 1945 (P.L.1242, No.428), known as the State Highway Law.*

**[(b)] (c)** Basic allocation to municipalities.—An amount equal to 20% of the proceeds deposited in the Motor License Fund pursuant to **[this chapter]** the “oil company franchise tax for highway maintenance and construction” which is attributable to 35 mills of the tax imposed under section 9502(a) 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)] (d)** 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)] (e)** 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 (d)** 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.

*(f) Basic allocation to highway maintenance.—An amount equal to the proceeds of 23 mills of the “oil company franchise tax for highway maintenance and construction” for the fiscal year 1983-1984 shall be dedicated to the maintenance of any State highways and shall be in addition to any funds*

*currently dedicated to the maintenance of any State highways. For fiscal year 1984-1985 and thereafter, an amount equal to the proceeds of 22 mills of the "oil company franchise tax for highway maintenance and construction" shall be dedicated to the maintenance of any State highway and shall be in addition to any funds currently dedicated to the maintenance of any State highways.*

*(g) Use of funds.—The funds appropriated in subsection (b) for functionally-local highway transfer shall be used to pay for the costs of restoration of such highways as provided in Chapter 92 and annual payments to the municipalities for maintenance of the highways transferred under Chapter 92 or under section 222 of the act of June 1, 1945 (P.L.1242, No.428), known as the State Highway Law, in accordance with the following:*

*(1) Annual maintenance payments shall be at the rate of \$2,500 per mile.*

*(2) Annual maintenance payments shall be paid at the same time as funds appropriated under the act of June 1, 1956 (1955 P.L.1944, No.655), referred to as the Liquid Fuels Tax Municipal Allocation Law, except that no maintenance payment shall be paid for a highway until after the year following its transfer to the municipality.*

*(3) Annual maintenance payments under this subsection shall be in lieu of annual payments under the Liquid Fuels Tax Municipal Allocation Law.*

Section 8. Title 75 is amended by adding a section to read:

**§ 9511.1. Imposition of additional tax.**

*(a) Subjects of tax.—In addition to the tax imposed upon liquid fuels and fuels by the act of May 21, 1931 (P.L.149, No.105), known as The Liquid Fuels Tax Act, the act of January 14, 1952 (1951 P.L.1965, No.550), known as the Fuel Use Tax Act, sections 1101-B and 1121-B of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, and the act of July 12, 1974 (P.L.458, No.161), referred to as the Liquid Fuels Additional Tax Act, an additional State tax in an amount of 1¢ per gallon, or fractional part thereof, is hereby imposed and assessed, except as provided in subsections (b) and (c) and except as otherwise provided by law, upon all:*

*(1) Liquid fuels used or sold and delivered by distributors within this Commonwealth except liquid fuels used as fuel in aircraft or aircraft engines taxable under The Liquid Fuels Tax Act.*

*(2) Fuels used by dealer-users within this Commonwealth except the use of fuel in aircraft or aircraft engines taxable under the Fuel Use Tax Act.*

*(b) Liquid fuels tax exceptions.—The tax imposed on liquid fuels by subsection (a) shall not be imposed upon liquid fuels delivered to the United States Government on presentation of a duly authorized United States Government exemption certificate or other evidence satisfactory to the department, and such liquid fuels used or sold and delivered as are not within the taxing power of this Commonwealth under the Commerce Clause of the Constitution of the United States and excepting liquid fuels delivered to the Commonwealth, every political subdivision, any volunteer fire company,*

*any volunteer ambulance service, any volunteer rescue squad, any second class county port authority and nonpublic schools not operated for profit on presentation of evidence satisfactory to the department.*

*(c) Fuel use tax exceptions.—The tax imposed by subsection (a) shall not be imposed upon any fuel that is used by or sold and delivered to the United States Government, when such sales and deliveries are supported by documentary evidence satisfactory to the department, upon any fuel not in excess of 50 gallons brought into this Commonwealth in the fuel supply tanks or other fueling receptacles or devices of a motor vehicle, upon any fuel used by or sold or delivered for use in farm machinery or equipment, engaged in the production or harvesting of farm or agricultural products involving the use of the public highways within a ten mile radius of the domicile of the owner of the machinery or equipment, when such sales and deliveries are supported by documentary evidence satisfactory to the department, or upon any fuel used by or sold or delivered to the Commonwealth of Pennsylvania, its political subdivisions, any volunteer fire company, any volunteer ambulance service, any volunteer rescue squad, any second class county port authority and any nonpublic schools not operated for profit, when such sales and deliveries are supported by documentary evidence satisfactory to the department.*

Section 9. This act shall take effect as follows:

- (1) The provisions relating to imposition and collection of taxes shall take effect in 15 days.
- (2) The remaining provisions shall take effect immediately.

APPROVED—The 22nd day of July, A. D. 1983.

DICK THORNBURGH