

No. 1994-57

## AN ACT

HB 1080

Amending the act of May 21, 1931 (P.L.149, No.105), entitled, as amended, "An act imposing a State tax, payable by those herein defined as distributors, on liquid fuels used or sold and delivered within the Commonwealth, which are practically, and commercially suitable for use in internal combustion engines for the generation of power; providing for the collection and lien of the tax, and the distribution and use of the proceeds thereof; requiring such distributors to secure permits, to file corporate surety bonds and reports, and to retain certain records; imposing duties on retail dealers, common carriers, county commissioners, and such distributors; providing for rewards; imposing certain costs on counties; conferring powers and imposing duties on certain State officers and departments; providing for refunds; imposing penalties; and making an appropriation," further providing for the use of liquid fuels tax revenues and for the calculation and utilization of liquid fuels tax money collected from fuels used in off-highway recreational vehicles; and making editorial changes.

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

Section 1. Section 10(a) of the act of May 21, 1931 (P.L.149, No.105), known as The Liquid Fuels Tax Act, amended July 30, 1975 (P.L.124, No.61), is amended to read:

Section 10. Disposition and Use of Tax.—(a) One-half cent per gallon of the permanent tax collected under the provisions of this act shall be paid into the Liquid Fuels Tax Fund of the State Treasury; and such moneys, paid into said fund, are hereby specifically appropriated for the purposes hereinafter set forth.

The moneys so paid into the Liquid Fuels Tax Fund, except those that are refunded as hereinafter provided, shall be paid to the respective counties of this Commonwealth, less such amounts as represent the difference between the annual fees prescribed in sections 709 and 710 of "The Vehicle Code" and those fees charged pursuant to section 710.1 of "The Vehicle Code" for annual registration of each motor vehicle operated by mass transportation systems, on the first day of June and December of each year, in the ratio that average return made during the three (3) preceding years to each county bears to the average amount returned to all counties for the three preceding years: Provided, That the distribution of tax to the counties from the Liquid Fuels Tax Fund that is payable the first day of August, one thousand nine hundred and thirty-one, shall be made under the provisions of the acts of Assembly repealed by this act. Such amounts as represent the difference between the annual fees prescribed in sections 709 and 710 of "The Vehicle Code" and those fees charged pursuant to section 710.1 of "The Vehicle Code" shall be paid into the Motor License Fund.

All moneys received by the counties hereunder shall be deposited and maintained in a special fund designated as the "County Liquid Fuels Tax Fund" into which no other moneys shall be deposited and commingled, except in any county which does not have sufficient money in such special fund to provide for payments designated in the current annual budget for payment from such special fund for the purposes of construction, reconstruction, maintenance and repair of roads, highways [and], bridges *and curb ramps from a road or highway to provide for access by individuals with disabilities consistent with Federal and State law*, property damages, compensation of viewers for services in eminent domain proceedings involving roads, highways and bridges, and for the construction, reconstruction, operation and maintenance of publicly owned ferryboat operations, interest and principal payments on road, bridge or publicly owned ferryboat operation bonds, or sinking fund charges for such bonds becoming due within the current calendar year and for the acquisition, maintenance, repair and operation of traffic signs and traffic signals, and for the erection and maintenance of stop and go signal lights, blinkers or other like traffic control devices[.], *provided that payments may be made from the fund for purposes of indirect costs, including benefit costs, overhead and other administrative charges for those county employes directly engaged in eligible projects and for purposes of vehicle liability insurance for equipment purchased under the fund, and provided further that indirect costs shall not exceed ten per centum of the yearly allocation to the county.* The county, for the purpose of such payments and such payments only, may borrow and place in such special fund moneys, not in excess of the liquid fuels tax funds to be received during the current calendar year, and all such loans shall be repaid from such special fund before the expiration of the current calendar year and not thereafter. Moneys so received and deposited shall be used only for the purpose of construction, reconstruction, maintenance, and repair of roads, highways [and], bridges *and curb ramps from a road or highway to provide for access by individuals with disabilities consistent with Federal and State law*, including the payment of property damage and compensation of viewers for services in eminent domain proceedings involving such roads, highways and bridges, now due or hereafter to become due, occasioned by or the relocation or construction of highways and bridges, and for the construction, reconstruction, operation and maintenance of publicly owned ferryboat operations, and for the payment of interest and sinking fund charges on bonds issued or used for highways and bridge purposes and publicly owned ferryboat operations, or on so much of any bonds as have been used for such purposes and for the acquisition, maintenance, repair and operation of traffic signs and traffic signals and all payments made by any county, either directly or indirectly, prior to the first day of January, one thousand nine hundred and forty-six, for any or all such purposes are hereby validated: Provided, That no expenditures from the county liquid fuels tax fund shall be made by the county commissioners for

new construction on roads, bridges, *curb ramps* or publicly owned ferryboat operations without first having obtained the approval of the plans for such construction from the Department of Transportation: And provided further, That the county commissioners shall not allocate moneys from the county liquid fuels tax fund to any political subdivision within the county, until the application and the contracts or plans for the proposed expenditures have been made on forms, prescribed, prepared and furnished, and first approved by the Department of Transportation. The county commissioners of each county shall make to the Department of Transportation, on or before the fifteenth day of January for the period ending December thirty-first of each year, on forms prescribed, prepared, and furnished by the Department of Transportation, a report showing the receipts and expenditures of such moneys received by the county, from the Commonwealth under the provisions of this section. Copies of such report shall be transmitted to the department and to the Department of the Auditor General for audit. Upon the failure of the county commissioners to file such report, or to make any payments, allocations or expenditures, in compliance with the provisions of this section, the department shall withhold further payments to the county out of the Liquid Fuels Tax Fund until the delinquent report is filed, transmitted, or said moneys allocated, or said expenditures for the prior twelve months are approved by the Department of Transportation.

\* \* \*

Section 2. Section 17 of the act, amended March 12, 1957 (P.L.8, No.3), July 15, 1969 (P.L.161, No.65) and December 19, 1975 (P.L.556, No.156), is amended to read:

Section 17. Refunds.—(a) The Board of Finance and Revenue may refund to distributors taxes, penalties, and interest paid by them on liquid fuels delivered to the United States government, or paid as the result of an error of law or of fact or of both law and fact. Claims for such refunds shall be made under the procedure prescribed by The Fiscal Code.

(b) Any person who shall use or buy liquid fuels on which the tax imposed by this act shall have been paid and shall consume the same (i) in the operation of any nonlicensed farm tractor or licensed farm tractor when used off the highways for agricultural purposes or nonlicensed powered farm machinery for purposes relating to the actual production of farm products or (ii) in the operation of a vehicle of a volunteer fire company, volunteer ambulance service or volunteer rescue squad shall be reimbursed the full amount of such tax.

(c) (1) When the tax imposed by this act shall have been paid and the fuel on which such tax has been imposed shall have been consumed in the operation of motorboats or watercraft upon the waters of the Commonwealth, including waterways bordering on the Commonwealth, the full amount of such tax shall be refunded to the **[Boating Fund of the Fish Commission]** *Boat Fund of the Pennsylvania Fish and Boat Commission* on petition to the Board of Finance and Revenue in accordance with prescribed procedures.

(2) In accordance with such procedures, the Pennsylvania Fish *and Boat* Commission shall biannually calculate the amount of liquid fuels tax consumed by said motorcraft and furnish such information relating to its calculations and data as may be prescribed or required by the Board of Finance and Revenue. This board shall review the petition and motorboat fuel consumption calculations of the Pennsylvania Fish *and Boat* Commission and then determine the amount of liquid fuels tax paid on liquid fuels consumed in the propulsion of motorboats and other motorcraft on the waters of the Commonwealth, including waterways bordering on the Commonwealth, and shall certify to the State Treasurer to refund annually to the [Boating Fund of the Fish Commission] *Boat Fund of the Pennsylvania Fish and Boat Commission* the amount so determined. The Department of [Highways] *Transportation* shall be accorded the right to appear at such proceedings and make its views known.

(3) Said moneys shall be used by the Pennsylvania Fish *and Boat* Commission acting by itself or by agreement with other State and Federal agencies including, but not limited to, the Navigation Commission for the Delaware River, the Department of [Forests and Waters] *Environmental Resources*, the Department of Health, and the Federal Bureau of Outdoor Recreation, only for the improvement of the waters of Pennsylvania on which motorboats are permitted to operate and may be used, including but not limited to the development and construction of motorboat areas; the dredging and clearing of water areas where motorboats can be used; the placement and replacement of navigational aids; the purchase, development and maintenance of public access sites and facilities to and on waters where motorboating is permitted; the patrolling of motorboating waters; the publishing of nautical charts in those areas of Pennsylvania not covered by nautical charts published by the United States Coast and Geodetic Survey or the United States Army Engineers; and the administrative expenses arising out of such activities.

(d) (1) *When the tax imposed by this act shall have been paid on fuel used in off-highway recreational vehicles within the Commonwealth, an amount equal to the revenue generated by the tax, but not derived herefrom, may be appropriated through the General Fund to the Department of Environmental Resources. It is the express intent of this act that all proceeds from the tax paid on fuel used in off-highway recreational vehicles within this Commonwealth be paid without diminution of the Motor License Fund.*

(2) *The Department of Environmental Resources shall biennially calculate the amount of liquid fuel consumed by off-highway recreational vehicles and furnish such information relating to its calculations and data as may be required by the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives.*

(3) *The General Assembly shall review the fuel consumption calculations of the Department of Environmental Resources to determine the amount of liquid fuels tax paid on liquid fuels consumed in the*

***propulsion of off-highway recreational vehicles in the Commonwealth and may annually appropriate to the Department of Environmental Resources the amount so determined.***

***(4) Said moneys shall be used for the benefit of motorized and nonmotorized recreational trails by the Department of Environmental Resources as provided in the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102-240, 105 Stat. 1914).***

***(e) Any person who shall use or buy any liquid fuel on which a tax imposed by this act in excess of one and one-half cents a gallon shall have been paid and shall use such liquid fuel in propeller-driven aircraft or aircraft engines, or who shall use or buy any liquid fuel on which a tax imposed by this act in excess of one and one-half cents per gallon shall have been paid and shall use such liquid fuel in jet or turbo-jet propelled aircraft or aircraft engines, shall be reimbursed in the amount of such excess.***

***(f) All such claims for reimbursement shall be made upon a form to be furnished by the Board of Finance and Revenue and shall include, in addition to such other information as the board may by regulation prescribe, the name and address of the claimant, the period of time and the number of gallons of liquid fuels used for which reimbursement is claimed, a description of the farm machinery, aircraft or aircraft engine in which such liquid fuels have been used and the purposes for which such machinery, aircraft or aircraft engine has been used, the size of the farm and part thereof in cultivation on which such liquid fuels have been used. Each such claim shall contain statements that the liquid fuels for which reimbursement is claimed have been used only for purposes for which reimbursements are permitted, that records of the amounts of such fuels used in each piece of farm machinery, aircraft or aircraft engine have been kept, and that no part of such claim has been paid except as stated. Each such claim shall contain a declaration that it and accompanying receipts are true and correct to the best of claimant's knowledge and shall be signed by the claimant or the person claiming on his behalf. Every claim shall be accompanied by receipts indicating that the liquid fuels or excess liquid fuels tax was paid on the liquid fuels for which reimbursement is claimed. All records of purchases of liquid fuels and use in each tractor or powered machinery, aircraft or aircraft engine shall be kept for a period of two years. Every such claim shall be made annually for the preceding year ending on the thirtieth day of June and shall be submitted to the Board of Finance and Revenue not later than the thirtieth day of September of each year and the board shall refuse to consider any claim received or postmarked later than such date. The claimant shall satisfy the board that he has paid the tax and that the liquid fuels have been consumed by him for purposes for which reimbursements are permitted under this section. The board may require any claimant to furnish such further information, proof, or fuller explanation as it shall deem necessary. The action of the Board of Finance and Revenue in granting or refusing reimbursement shall be final. The board shall deduct the sum of one dollar***

and fifty cents (\$1.50), which shall be considered as a filing fee, from every claim for reimbursement granted. Such filing fees are hereby specifically appropriated to the Board of Finance and Revenue and to the Department of Revenue for expenses of any nature whatsoever incurred in the administration of the reimbursement provisions of this act. The Board of Finance and Revenue shall have the power to refer to the Department of Revenue, for investigation, any claim for reimbursement filed under the provisions of this act and it shall be the duty of the Department of Revenue to investigate such application and report to the Board of Finance and Revenue relative thereto. Any person making any false or fraudulent statement for the purpose of obtaining reimbursement shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1000) or to undergo imprisonment for not more than six (6) months, or both.

(g) All refunds and reimbursements of moneys allowed hereunder shall be paid from the Motor License Fund and the Liquid Fuels Tax Fund in amounts equal to the original distribution and payment of such moneys into said funds: Provided, That reimbursement for taxes paid on liquid fuels consumed in the operation of tractors and powered machinery for purposes relating to the actual production of farm products and reimbursement for taxes paid on liquid fuels used in aircraft or aircraft engines shall be paid out of the Motor License Fund.

(h) As much of the moneys, from time to time, in the Motor License Fund and the Liquid Fuels Tax Fund, as may be necessary, is hereby appropriated to the Board of Finance and Revenue for the purpose of making refunds and reimbursements as herein authorized. Estimates of the amounts to be expended from these funds for refunds and reimbursements, from time to time, by the board shall be submitted to the Governor for his approval or disapproval as in the case of other appropriations to administrative departments, boards and commissions; and it shall be unlawful [for the Auditor General] to honor any requisition of the Board of Finance and Revenue for the expenditure of moneys hereunder in excess of the estimates approved by the Governor.

(i) The provisions of this section relating to reimbursement of taxes paid on liquid fuels consumed in the operation of tractors and powered machines for purposes relating to the actual production of farm products shall apply only to liquid fuels purchased on and after the first day of July, one thousand nine hundred fifty-five.

(j) The [Pennsylvania Aeronautics Commission] *Department of Transportation* is authorized to make allocations of taxes collected under this act to airports in proportion to the average of their allocations received from the [Pennsylvania Aeronautics Commission] *Department of Transportation* during the period for which they have received such allocations not to exceed five years or, in the case of airports having no such allocation experience, in equal proportion with other airports based upon comparative collections under

this tax. In no case shall the amount apportioned to the airport be less than the highest amount apportioned in any one of the previous five years.

Section 3. This act shall take effect as follows:

- (1) The amendment of section 17 of the act shall take effect July 1, 1994.
- (2) The remainder of this act shall take effect immediately.

APPROVED—The 1st day of July, A.D. 1994.

ROBERT P. CASEY