

No. 1982-185

AN ACT

HB 1664

Amending the act of June 19, 1964 (P.L.7, No.1), entitled "An act imposing a road tax upon certain motor carriers, providing for the collection and administration thereof, establishing penalties, and making an appropriation to the Motor License Fund," redefining "motor vehicle"; providing for the retention of records and the filing of a bond; further providing for the failure to pay the tax and making determinations and redeterminations and further providing for exemptions.

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

Section 1. Clause (3) of section 2, act of June 19, 1964 (P.L.7, No.1), known as the "Motor Carriers Road Tax Act," amended July 15, 1976 (P.L.1026, No.205), is amended to read:

Section 2. Definitions.—As used in this act:

* * *

(3) "Motor vehicle" means a ["Commercial Motor Vehicle"] "*Motor Carrier Vehicle*" as defined in [the act of April 29, 1959 (P.L.58, No.32), known as "The Vehicle Code," and having more than two axles; or a "Truck Tractor" as defined in "The Vehicle Code," and having two or more axles; provided, that "motor vehicle" shall also mean a "Commercial Motor Vehicle" as defined in "The Vehicle Code" and having two axles if the motor carrier operating or causing the operation of such vehicle on any highway in this State, by written statement upon the report made pursuant to section 8 hereof, elects to have such vehicle deemed a "motor vehicle" under this act] *75 Pa.C.S. § 102 (relating to definitions)*.

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Section 2. Sections 10, 14 and 17 of the act are amended to read:

Section 10. Records.—Every motor carrier shall keep such records, in such form as the secretary reasonably may prescribe, as will enable the carrier to report and enable the department to determine the total number of over-the-road miles traveled by its entire fleet of motor vehicles, the total number of over-the-road miles traveled in Pennsylvania by said entire fleet, the total number of gallons of motor fuel used by said entire fleet and the total number of gallons of motor fuel purchased in Pennsylvania for said entire fleet. As used in this section and in section 7, "entire fleet" and "entire operations" shall mean those motor vehicles which use the highways of Pennsylvania at any time during the period covered by the quarterly report and the operations of such vehicles respectively. All such records shall be safely preserved for a period of [three] *five* years in such manner as to insure their security and availability for inspection by the secretary or any authorized employe

engaged in the administration of this act. Upon application in writing, stating the reasons therefor, the secretary may, in his discretion, consent to the destruction of any such records at any time within said period if such records pertain to a period which has been audited by the department. *Every taxpayer shall retain records required by this act at a place within the Commonwealth, provided that a taxpayer who elects to retain records outside of the Commonwealth shall assume reasonable out-of-state audit expenses.*

Section 14. Filing of Bond; Refund Provisions.—A motor carrier may give a surety company bond in **[the] an amount [of ten thousand dollars (\$10,000)] deemed necessary by the secretary to protect the revenues of the Commonwealth** payable to the Commonwealth of Pennsylvania, and conditioned that the carrier will pay all taxes due and to become due under this act from the date of the bond to the date when either the carrier or the bonding company notifies the department that the bond has been cancelled. The surety shall be a corporation authorized to write surety bonds in Pennsylvania. So long as the bond remains in force the board may order refunds to the motor carrier in the amounts appearing to be due on applications duly filed by the motor carrier under section 4, without first auditing the records of the carrier **[including the penalties and interest provided in section 18,].** *The bond shall cover taxes and interest due thereon* even though the assessment is made after cancellation of the bond, but only for taxes due and payable while the bond was in force and penalties and interest on said taxes.

Section 17. Failure to Report or Pay Tax; Penalty; Interest.—When any motor carrier fails to file a report within the time prescribed by this act for the filing thereof, he shall pay as a penalty **[for each day thereafter, Saturdays, Sundays, and other legal holidays excluded, until the report is filed, the sum of five dollars (\$5)] twenty-five dollars (\$25) for each failure to file on or before the prescribed date.** In addition to the penalty herein imposed, any unpaid tax shall bear interest at the rate of one per cent per month or fraction thereof until the same is paid. The penalties and interest charges herein imposed shall be paid to the department in addition to the tax due. **[The secretary, if satisfied that the failure to file the report or pay the tax was excusable, may remit or waive the payment of the whole or part of any penalty and such portion of the interest charge as is in excess of six per cent per annum.]**

Section 3. Section 20 of the act, repealed in part April 28, 1978 (P.L.202, No.53), is amended to read:

Section 20. Failure to Pay Tax; Determination; Redetermination; Review.—(a) If any person shall fail to pay any tax imposed by this act for which he is liable, the department is hereby authorized and empowered to make a determination of additional tax and interest due by such person based upon any information within its possession or that shall come into its possession. All of such determinations shall be made so that notice thereof shall reach the parties against whom made within **[three] five years** after the due date of the tax. *Any such assessment may be*

made at any time during such period notwithstanding that the department may have made one or more previous assessments against the taxpayer for the year in question, or for any part of such year. In any such case, no credit shall be given for any penalty previously assessed or paid.

(b) Where no report is filed, the amount of the tax due may be assessed and collected at any time as to taxable transactions not reported.

(c) Where the taxpayer willfully files a false or fraudulent report with intent to evade the tax imposed by this act, the amount of tax due may be assessed and collected at any time.

(d) Notwithstanding any of the foregoing provisions of this act, where, before the expiration of the period prescribed therein for the assessment of a tax, a taxpayer has consented, in writing, that such period be extended, the amount of tax due may be assessed at any time within such extended period. The period so extended may be extended further by subsequent consent, in writing, made before the expiration of the extended period.

[(b)] (e) Promptly after the date of such determination, the department shall send, by **[certified] first class** mail, a copy thereof to the person against whom it was made. Within ninety days after the date upon which the copy of any such determination was mailed, such person may file with the department a petition for redetermination of such taxes. Every petition for redetermination shall state specifically the reasons which the petitioner believes entitles him to such redetermination, and it shall be supported by affirmation 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 the date of any determination to dispose of any petition for redetermination. Notice of the action taken upon any petition for redetermination shall be given to the petitioner promptly after the date of redetermination by the department.

[(c)] (f) Any person shall have the right to review by the Board of Finance and Revenue and appeal in the same manner and within the same time as provided by law in the case of capital stock and franchise taxes imposed upon corporations.

Section 4. Section 24 of the act is amended to read:

Section 24. Exempt Vehicles; Carriers.—Nothing in this act shall apply to any vehicle operated by or on behalf of any department, board, bureau or commission of this State, or any political subdivision thereof, or any quasi-governmental authority of which this State is a participating member, or any agency of the Federal government or the District of Columbia, or of any state or any political subdivision thereof which grants similar exemption to publicly owned vehicles registered in this State. Nor shall the provisions of this act apply to any school bus operated by, for, or on behalf of this State, any political subdivision thereof, or any private or privately operated school. The provisions of this act shall not apply to those motor buses operating under the provisions of the act of August 1, 1963 (P.L.476, No.249), entitled “An act providing for the taxation of motor fuels consumed by interstate buses upon a

system uniform among jurisdictions enacting the same provisions.” *The provisions of this act shall not apply to a truck, truck tractor or combination used solely for agricultural or farming purposes owned and operated by a nonresident in full compliance with the registration requirements of the place of residence of the owner.*

Section 5. This act shall take effect July 1, 1983.

APPROVED—The 25th day of June, A. D. 1982.

DICK THORNBURGH