

Act of May 6,
1925 (P. L. 528)

proved the sixth day of May, one thousand nine hundred and twenty-five (Pamphlet Laws, five hundred and twenty-eight), entitled "An act to amend section two of the act, approved the fourteenth day of June, one thousand nine hundred and twenty-three (Pamphlet Laws, seven hundred and seventy-nine), entitled 'An act for the registration and regulation of certain individuals and entities, selling, offering for sale or delivery, soliciting subscriptions to or orders for, or undertaking to dispose of, inviting offers for or inquiries about, or dealing in any manner in, securities defined herein; conferring powers and imposing duties on the Commissioner of Banking, and otherwise providing for the administration of this act; prescribing penalties; and making an appropriation,' exempting building and loan associations, banks, savings banks, and trust companies from the provisions of the act," be and the same are hereby repealed.

APPROVED—The 13th day of April, A. D. 1927.

JOHN S. FISHER

No. 166

AN ACT

Imposing a State tax on liquid fuels, including all liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, including all distillates of, and condensates from, petroleum, natural gas, coal, coal tar, and vegetable ferments so usable, and sold by dealers in this Commonwealth, except for the purpose of resale, or used by consumers when no tax thereon has been collected by dealers; providing for the collection of such tax, and the creation of liens; and for the distribution and use of the revenues derived from such tax; providing for the filing of certificates and reports of the sale of such liquid fuels to dealers and consumers, as defined in this act; providing for the issuing, revoking, and use of permits; and fixing penalties.

Section 1. Be it enacted, &c., That the following words, terms, and phrases, used in this act, are, for the purpose hereof, defined as follows:

(a) The term "liquid fuels" shall mean all liquids ordinarily, practically, and commercially usable in internal combustion engines for the generation of power, and shall include all distillates of, and condensates from, petroleum, natural gas, coal, coal tar, and vegetable ferments—said distillates and condensates being ordinarily designated as gasoline, naphtha, benzol, benzine, and alcohols so usable, but not restricted to such designations.

(b) The word "dealer" shall include any person, firm, copartnership, association, or corporation, selling liquid fuels, as herein defined, to purchasers who purchase for purposes other than resale.

Liquid fuels.

Definitions.

"Liquid fuels."

"Dealer."

"Consumer."

(c) The word "consumer" shall include any person, firm, copartnership, association, or corporation, who or which imports, or causes to be imported, into this Commonwealth, liquid fuels, as defined in this act, for his or its own use, and also any person, firm, copartnership, association, or corporation, who or which uses liquid fuels in this Commonwealth not purchased from dealers, as defined in this act, and on which no tax was collected by a dealer under the provisions of this act.

Dealers and consumers to file certificates with Auditor General.

Section 2. (a) All dealers and consumers of liquid fuels in this Commonwealth, engaged in such business at the time of this act shall go into effect, shall, within thirty days thereafter, and all dealers and consumers of liquid fuels engaging in the transaction of such business hereafter, shall, prior to the commencement of such business, file a duly acknowledged certificate with the Auditor General, on a form prescribed, prepared, and furnished by him, which shall set forth the name under which such dealer or consumer transacts or intends to transact such business, and the place of business of such dealer or consumer; if such dealer or consumer has more than one place of business within the State, the address of the principal place of business within the State; and, if such dealer or consumer is a firm, copartnership, or association, the names and addresses of such persons constituting such firm, copartnership, or association; and, if a corporation, the names and addresses of the principal officers thereof. No dealer or consumer, as herein defined, shall, after the date this act becomes effective, sell or use any liquid fuels, until such certificate is filed as required by this act; nor shall any dealer or consumer, engaging in such business subsequent to the passage of this act, commence such business without first filing such certificate with the Auditor General.

Form.

Contents of certificate.

No dealer or consumer to sell or use liquid fuels until certificate is filed.

Liquid fuel permit to be issued.

(b) Upon filing the certificates provided for in this section, the Auditor General shall issue to each such dealer or consumer a "Liquid Fuel Permit," for each place of business of such dealer or consumer within this Commonwealth. Such liquid fuel permits shall not be assignable, and shall be valid only for the dealer or consumer in whose name issued, and for the transaction of business at the place designated therein. Such permit shall be conspicuously exposed, by such dealer or consumer, at each place of business maintained by him or it within the Commonwealth, and shall authorize such dealer or consumer to engage in the sale and/or use of liquid fuels, upon conditions that the tax imposed by this act is assessed, collected, reported, and paid into the State Treasury as provided by this act.

Nature of permit.

Permit to be exposed.

Authority under permit.

It shall be unlawful for any dealer or consumer to sell or use liquid fuels, at any place within this Commonwealth, without having on public display a liquid fuel permit issued to him for such place.

Sale or use without display of permit unlawful.

(c) All liquid fuel permits, issued under the provisions of this act, shall be revocable by the Auditor General, upon proof furnished to him that the holder thereof has violated any of the provisions of this act, or has failed or neglected to collect or report or pay over any tax imposed by this act. It shall be unlawful for any dealer or consumer to sell or use liquid fuels after any such permit has been revoked.

Revocation of permit.

Sale or use after permit revoked.

(d) All liquid fuel permits issued by the Auditor General prior to the passage of this act shall continue in force and be valid until renewed or revoked by the Auditor General.

Permit issued prior to this act

(e) Whenever any dealer, or consumer, in liquid fuels, shall cease to sell or use liquid fuels within this Commonwealth, he shall, within ten days thereafter, notify the Auditor General thereof, make the report required by this act, pay the tax due as shown by said report, and surrender to the Auditor General all liquid fuel permits in his possession.

Duties of dealer or consumer ceasing to sell or use.

(f) Nothing contained in this section shall require the filing of any certificate, or the necessity of having a liquid fuel permit, for such transactions in interstate or foreign commerce as are not within the taxing power of the State.

Permit not required for transactions in interstate or foreign commerce.

(g) Any dealer or consumer, or any of his or its agents or employes, violating any of the provisions of this section, shall, upon conviction thereof in a summary proceeding before any magistrate, alderman, or justice of the peace, be sentenced to pay a fine of not less than fifty dollars nor more than three hundred dollars and, in default of the payment of such fine and costs, the person responsible for such violation shall be imprisoned for a term of thirty days.

Violations.

Convictions.

Penalty.

Section 3. A State tax of two cents a gallon, or fraction thereof, is hereby imposed upon all liquid fuels sold by dealers in this Commonwealth, except for the purpose of resale, and upon all liquid fuels used within this Commonwealth by consumers when no such tax has been collected thereon by a dealer. In addition to the aforesaid tax of two cents, for the period commencing the first day of July, one thousand nine hundred and twenty-seven and ending the thirtieth day of June, one thousand nine hundred and twenty-nine, an emergency State tax of one cent a gallon, or fraction thereof, is hereby imposed on all liquid fuels sold by dealers in this Commonwealth, except for the purpose of resale, and upon all liquid fuels used within this Commonwealth by consumers, when no such tax has been collected thereon by a dealer. Duplicate taxation is not intended, but the tax hereby imposed

State tax.

Emergency State tax.

Application of tax.

Collection by
dealers.

Payment by
consumers.

Statement or
return of amount
sold or used.

Contents of state-
ment or return.

Neglect or refusal
to make state-
ment or return.

Payment of tax.

Examination of
books and papers
of dealer and
consumer.

Penalty for divulg-
ing results of in-
vestigations.

shall apply to all liquid fuels sold and/or used within this Commonwealth, excepting such transactions in interstate or foreign commerce as are not within the taxing power of the State. The taxes on sales hereby provided for shall be collected by the dealers selling liquid fuels, to purchasers who purchase for purposes other than resale; and the taxes on use shall be paid by the consumers, who use liquid fuels upon which the tax has not been paid; and said taxes shall be paid by such dealers and consumers into the State Treasury in the manner and within the times herein specified.

Section 4. For the purpose of ascertaining the amount of the taxes, it shall be the duty of every such dealer and consumer to transmit to the Auditor General, upon a form prescribed, prepared, and furnished by him, a statement or return, under oath or affirmation, of the liquid fuels purchased, sold and/or used, by such dealer or consumer during the preceding three months, ending the last days of March, June, September, and December of each year, which statement or return shall be filed with the Auditor General on or before the last days of April, July, October, and January of each year, and shall show the number of gallons of such liquid fuels purchased, sold, and/or used within the State, during the said periods, from the respective places of business of such dealer or consumer, with such further information as the Auditor General shall prescribe. If any such dealer or consumer shall neglect or refuse to make such statement or return, as herein required and provided, an additional ten per centum of the amount of the tax shall be added and collected, on an account settled as hereinafter provided, and, in addition thereto, the liquid fuel permit of such dealer may be revoked by the Auditor General.

Section 5. Every dealer and consumer, at the time of making the reports required by section four of this act, shall pay to the State Treasurer the amount of tax due for the period covered by such reports.

Section 6. The Auditor General, or any agent appointed in writing by him, is hereby authorized to examine the books and papers of any dealer or consumer, pertaining to the business made taxable by this act, to verify the accuracy of any statement or return made under the provisions of this act; but any information gained by the Auditor General, or any other person, as a result of the reports, investigations, or verifications herein required to be made, shall be confidential, and any person divulging such information shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars nor more than one thousand dollars, or to undergo imprisonment of not more than one year or both.

Section 7. If the Auditor General is not satisfied with the statement or return made by any dealer or consumer under the provisions of this act, he is hereby authorized and empowered to settle an account against such dealer or consumer, based upon the facts contained in the statement or return, or upon any information within his possession, or that shall come into his possession, with the right to the dealer or consumer, dissatisfied with the settlement so made against him, to appeal therefrom in the manner now provided by law for appeals from tax settlements. If any such dealer or consumer shall neglect or refuse to make the statement or return, as required by this act, the Auditor General may estimate an assessment against such dealer or consumer and settle an account for taxes, together with a penalty of ten per centum thereon, as hereinbefore provided, from which settlement there shall be no right of appeal.

Auditor General may settle accounts if dissatisfied with return.

Appeal.

Estimated return upon neglect or refusal.

Section 8. Any dealer or consumer who shall fail, neglect, or refuse, to make the statements or returns, or pay the tax as herein prescribed, or who shall refuse to permit the Auditor General, or any agent appointed by him in writing, to examine the books or papers of any such dealer or consumer, pertaining to the business made taxable by this act, or who makes any incomplete, false, or fraudulent statement or return hereunder, or who does, or who attempts to do, anything whatsoever to avoid a full disclosure of the amount of such business done or liquid fuels consumed, or to avoid the payment of the whole or any part of the tax due, shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than one hundred dollars or more than one thousand dollars, or, in the case of an individual or the officer or employe charged with the duty of making such statement or return for a person, firm, copartnership, association, or corporation, to undergo imprisonment not exceeding six months, or both. Such penalty shall be in addition to the penalty imposed by any other section of the act.

Violations.

Misdemeanor.

Penalty.

Section 9. The tax imposed by this act shall be paid by the person, firm, copartnership, association, or corporation, purchasing liquid fuels from dealers for his own use and not for the purpose of resale, or by the person, firm, copartnership, association, or corporation, using liquid fuels, upon which no tax has been collected by a dealer; and every person, firm, copartnership, association, or corporation, required by this act to collect the tax herein specified, shall state the amount of such tax, separately from the price of the said liquid fuels, on all liquid fuel price display signs, sales or delivery slips, bills, statements, et cetera, and any one failing so to state separately the tax and price of the said liquid fuels, shall, upon conviction

By whom tax is payable.

Amount of tax to be stated separately.

thereof, be subject to the penalties provided in section two (g) of this act.

Disposition of tax.

Share of county.

Remaining 75%
and emergency
tax.

Appropriation.

Statement of
liquid fuels sold
for purpose of
resale.

Contents.

Failure to make
report.

Lien for taxes
collected by
dealer or con-
sumer.

Section 10. Twenty-five per centum of the permanent two cent tax collected under the provisions of this act shall be credited to the county where the tax was collected and shall be used only for the purpose of the construction, reconstruction, maintenance, and repair of roads and highways, and for the payment of the interest on county bonds issued for road purposes, and shall be paid over to such county semiannually on the first days of August and February of each year. The remaining seventy-five per centum of the said permanent two cent tax and the whole amount of the one cent emergency tax, imposed by the provisions of this act, shall be paid into the motor license fund, and such moneys, so paid into said fund, are hereby specifically appropriated for the same purposes for which moneys in the said motor license fund are dedicated and appropriated by law.

Section 11. Every person, firm, copartnership, association, or corporation, who or which sells liquid fuels for the purpose of resale within the Commonwealth, shall transmit to the Auditor General, upon a form prescribed, prepared, and furnished by him, a statement, under oath or affirmation, of the number of gallons of liquid fuels sold within the State for the purpose of resale, during the preceding three months, ending the last day of March, June, September, and December of each year, which statement shall be filed with the Auditor General on or before the last days of April, July, October, and January of each year, and shall show the name and business address, including the county, of each dealer to whom such liquid fuels were sold, and the amount sold to each such dealer. Such name and address shall correspond to the name and address of the dealer as shown in his or its liquid fuel permit. It is unlawful for any person, firm, copartnership, association, or corporation, to fail, neglect, or refuse to make the report required by this act. Any person, firm, copartnership, or corporation, violating the provisions of this section, shall be subject to the penalties provided in section two (g) of this act.

Section 12. All taxes collected by a dealer or consumer for the Commonwealth shall be considered a public account, after being settled in the manner herein prescribed, and, as such, shall be a lien upon the franchise or property, both real and personal, of any dealer or consumer, after the same has been entered and indexed of record by the prothonotary of the county where the dealer's or consumer's franchise or property is situate.

Section 13. Whenever such taxes, interests, or penalties, forming the public account herein provided, are not paid within sixty days from the date of their settlement by the Auditor General, and no appeal has been taken from such settlement in the method provided by law, and in all cases of judicial sales, assignments, or bankruptcies, the Auditor General may employ counsel to collect the same, with the approval of the Attorney General, and such counsel is authorized and directed to add to such settlement, forming such public account, and to collect from such dealer or consumer, for the purpose of compensating such counsel so employed, a counsel's commission, based on the amount of such collection, at the following rates, viz: Ten per centum on the first five hundred dollars (\$500); five per centum on the next two thousand dollars (\$2,000); two and one-half per centum on any amount in excess of two thousand five hundred dollars (\$2,500); which commissions, together with costs, shall be paid by such dealer or consumer, and shall have the same priority and lien as such public account provided for herein: Provided, That the Auditor General shall not so employ counsel as aforesaid until he shall have first given ten days' notice, in writing, of his intention so to do, to such dealer or consumer: Provided further, however, That, when such counsel is employed by the Auditor General as aforesaid, and in the collection of such taxes, bonus, interest, penalties, and public accounts, any litigation arises, or it is necessary to commence any litigation on behalf of the Commonwealth, such litigation shall be under the supervision, direction, and control, of the Attorney General of the Commonwealth.

Employment of
counsel to collect.

Counsel's commis-
sion.

Proviso.

Proviso.

Section 14. All fines imposed under this act shall be payable by the magistrate, alderman, justice of the peace, or officer collecting the same, to the State Treasurer, who shall deposit the same into the motor license fund.

Disposition of
fines.

Section 15. It shall be the duty of the Auditor General to promptly report to the Department of Highways any violation of this act by dealers and consumers.

Report to Depart-
ment of Highways.

Section 16. The provisions of this act are severable and, if any of its provisions shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions of the act. It is hereby declared as a legislative intent that this act would have been adopted had such unconstitutional provisions not been included herein.

Severability of
act.

Section 17. All acts and parts of acts inconsistent herewith are hereby repealed.

Repeal.

APPROVED—The 14th day of April, A. D. 1927.

JOHN S. FISHER