

The New Ohio Highway Use Tax

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One of the major legislative enactments of the 100th General Assembly of Ohio was Amended Substitute House Bill No. 619 which provides additional taxes for the construction of highways. In broad outline, the act contains four main divisions. Sections 1 through 15 levy a highway use tax, generally known as an axle-mile tax, upon commercial vehicles. Section 16 levies an additional tax of one cent per gallon on motor fuel. Section 17 creates in the state treasury a "state highway construction and bond retirement fund," to which shall be credited the receipts from the highway use tax and the additional one cent motor fuel tax. Sections 18 through 21 create a "state highway construction council" and prescribe its powers, duties, and functions.

For the purposes of this survey, analysis will be limited to the provisions of Sections 1 through 15 of the act. No consideration will be given herein to the remaining provisions levying an additional motor fuel tax, providing for a state highway construction and bond retirement fund, and creating a state highway construction council, since the main issue which confronted the General Assembly and which created the most controversy was the axle-mile tax.

In considering the nature and purposes of this tax, the levying provisions which follow must be kept clearly in mind.¹

For the purpose of providing revenues to pay the cost of administering and enforcing the laws pertaining to the levy and collection of the tax imposed by this section, to defray the expenses of the highway construction council, to provide funds to pay the state's share of the cost of constructing or reconstructing highways and eliminating railway grade crossings on the major thoroughfares of the state highway system and urban extensions thereof and to pay interest, charges and principal of bonds issued to provide funds to pay the state's share of the cost of such construction, reconstruction and elimination of railway grade crossings, there is hereby levied a highway use tax upon each commercial car with three or more axles, each commercial car used as part of a commercial tandem and each commercial tractor used as part of a commercial tractor combination or commercial tandem

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¹Sec. 6

The tax so levied is at graduated rates according to mileage traveled in Ohio, as follows:

- (1) Commercial car with three or more axles..... $\frac{1}{2}$ cent per mile
- (2) Commercial tractor authorized by permit to operate as part of a commercial tractor combination with a maximum of three axles.....1 cent per mile
- (3) Commercial tractor authorized by permit to operate as part of a commercial tractor combination with a maximum of four axles..... $1\frac{1}{2}$ cents per mile
- (4) Commercial tractor authorized by permit to operate as part of a commercial tractor combination with a total of five or more axles.....2 cents per mile
- (5) Commercial car or commercial tractor authorized by permit to operate as part of a commercial tandem with four or more axles... $2\frac{1}{2}$ cents per mile

Thus, it will be observed that the highway use tax is, in form, a mileage tax in which the graduated rates are determined according to the number of axles on each vehicle or vehicular combination for which highway use permits are obtained. As such, it is to be distinguished from a weight-distance tax like that of New York in which tax rates are graduated according to the maximum gross weight of each vehicular unit. It is also to be distinguished from the ton-mile tax which, simply stated, is computed by multiplying weight times distance times a tax rate. The only other state using the axle factor is Alabama which levies a tax of one-fourth cent per mile per axle on all vehicles transporting property for hire.

In view of the fact that the tax is levied upon "each commercial car with three or more axles, each commercial car used as part of a commercial tandem and each commercial tractor used as part of a commercial tractor combination or commercial tandem," it is necessary to note the definitive provisions of the act. The term "commercial car" means any motor vehicle used for transporting property, wholly on its own structure, on a public highway. The term "commercial tractor" means any motor vehicle designed and used to propel or draw a trailer or semi-trailer or both on a public highway without having any provisions for carrying loads independently of such trailer or semi-trailer. The term "commercial tandem" is defined to mean any commercial car and trailer or any commercial tractor, semi-trailer and trailer when fastened together

and used as one unit. A "commercial tractor combination" is defined as any commercial tractor and semi-trailer when fastened together and used as one unit. The statutory definition of the terms "trailer" and "semi-trailer" corresponds with the general understanding of those terms, with certain exceptions, while the term "axle" is technically defined as two or more load carrying wheels mounted in a single transverse vertical plane. The definition of "public highway" excludes any highway under the jurisdiction of the Ohio Turnpike Commission.²

The procedural and administrative provisions of the act may be conveniently summarized under four group headings: (1) highway use permits, (2) quarterly returns, (3) refund claims, (4) assessment and enforcement provisions, (5) reciprocity agreements, and (6) specific exemptions. Without undertaking an exhaustive analysis, the following explanation will permit a panoramic view at least of each of these provisions.

*Highway Use Permits*³

The act requires each owner of a commercial car or a commercial tractor, as to which the tax applies, to apply to the Registrar of Motor Vehicles for a highway use permit on or before October 1, 1953, and on or before the first day of April in each year thereafter. Each application for a commercial car must state the number of axles on such car and the *maximum* number of axles in any commercial tandem of which such car *may* be a part. In the same manner, each application for a commercial tractor must state the *maximum* number of axles in any commercial tractor combination or commercial tandem of which such commercial tractor *may* be a part. The reference to the maximum number of axles of the vehicular combination is important because, as indicated later, the tax rate is determined in the first instance on this basis.

Upon filing such application, and payment of a statutory fee of two dollars, the registrar is required to issue a highway use permit together with a non-transferable identification plate or sticker. Such identification plate or sticker must be displayed on the commercial car or tractor for which it was issued at all times and in such manner as the registrar shall prescribe. Within twenty days after the issuance of a highway use permit, the registrar is also required to deliver a copy thereof to the tax commissioner.

The highway use permit and identification plate or sticker are obviously an enforcement device. They will provide the tax commissioner with a record of vehicles subject to the taxing provisions of the law, and will also enable enforcement officers to ascertain whether a particular vehicular combination is in conformity with

² Sec. 1

³ Secs. 2 and 3

the maximum axle declaration upon which the tax is initially assessed.

Quarterly Returns

The act provides that highway use tax returns must be filed by the owner of each commercial car and each commercial tractor subject to the tax on or before the 20th day of January, April, July, and October in the year 1954 and on or before the same dates in each year thereafter. Such returns must be filed with the treasurer of state on forms prescribed by the tax commissioner and, at the same time, payment of the tax due for the preceding three calendar months must be made. Upon receipt of each return, the treasurer of state is required to mark thereon the date of receipt thereof and the amount of tax payment, and to transmit the return to the tax commissioner. The first returns will be due on or before January 20, 1954, covering the preceding three calendar months.⁴

For the purpose of assuring compliance with its provisions, the act requires taxpayers to keep complete and accurate records, upon forms prescribed by the tax commissioner, of the total miles traveled in Ohio together with such other information as the commissioner may require. Such records must be preserved for a period of four years.⁵ It should be noted that these records must be kept not only by the vehicle owner to whom the highway use permit was issued but also by any person other than the owner who operates the equipment pursuant to a certificate issued by the public utilities commission. This requirement was undoubtedly inserted because of the practice among some commercial carriers of leasing certain equipment from employees and other owners. In the case of leased equipment, however, it should be noted that tax liability is imposed upon the owner thereof and that, while the lessee may undoubtedly pay the tax, his failure to do so does not absolve the owner.⁶

Although the tax rate, as previously shown, is determined by the declared maximum number of axles, taxpayers should also keep accurate records of miles traveled by taxable equipment where the actual number of axles employed is less than the declared maximum number. The reason for this suggestion lies in the fact that there is a provision in the act for refund of tax where the axles actually used for a specified number of miles is less than the declared maximum number, as hereinafter explained.

In addition to the highway use tax return, the act also provides that every person who is the holder of a certificate issued

⁴ Sec. 8

⁵ Sec. 7

⁶ Sec. 6

by the public utilities commission must file with the tax commissioner certain information returns.⁷

Refund Claims⁸

As previously indicated, the tax rate is governed by the declared maximum number of axles for which each commercial car and tractor is registered as indicated on the highway use permit. This means that the tax is paid in the first instance on the maximum basis even though the actual number of axles used for particular trips or a specified number of miles is less than the declared maximum number.

However, there is a provision in the act whereby the owner, at the end of any calendar year, may file with the tax commissioner an application for a tax refund where he has paid tax on the basis of the declared maximum number of axles but has actually used a lesser axle combination for a specified number of miles.

To illustrate, the owner may have registered a particular tractor for use in a four-axle combination, in which event the tax rate for all miles traveled by that tractor would be at the rate of one and one-half cents per mile. Actually, the tractor may have been used during a portion of its annual mileage in a three-axle combination, as to which the tax rate is one cent per mile. Under such circumstances, the taxpayer may recover the tax difference between the two amounts upon approval of the refund application by the tax commissioner. It is this provision which renders it important for the taxpayer to keep accurate records of mileage for each actual axle combination, as hereinafter suggested.

This refund provision, it is respectfully submitted, is both cumbersome and unwise. It means that the taxpayer may have substantial amounts of refundable tax money impounded for extensive periods of time, and that the state will be unable to determine the net amount of its revenue from this tax source until after all refund claims have been processed after the end of each tax year. It would appear that the same result could have been achieved without these undesirable consequences if the tax had been assessed in the first instance on the basis of the actual axle-mileage rather than the declared maximum axle-mileage. An amendment to this effect would probably have the support of both the trucking industry and the administrative authorities at a subsequent legislative session.

Administrative And Enforcement Provisions

The act empowers the tax commissioner to make deficiency assessments in the event any person required to file a highway

⁷ Sec. 9

⁸ Sec. 6

use tax return fails to file such return within the time prescribed, files an incomplete return, files an incorrect return, or fails to remit the full amount of the tax due. Such assessments carry a mandatory fifteen per cent penalty which is subject to remission pursuant to rules adopted by the commissioner.⁹

The entire assessment procedure and the provisions for administrative and judicial review thereof are substantially the same as those contained in the Ohio sales and use tax laws.¹⁰ The taxpayer has the right to file a petition for reassessment with the tax commissioner within thirty days after service of the assessment and thereafter to appeal to the board of tax appeals and the courts as provided by law. After an assessment becomes final, there is a provision for taking summary judgment in favor of the state against the person assessed. As in the case of sales and use taxes, there is a four-year statute of limitations against assessments, except when the person assessed failed to file a highway use tax return as required by the act.¹¹

In addition to assessment procedures, there are other enforcement devices which include suspension or revocation of highway use permits,¹² service of process upon the secretary of state in any action or proceeding instituted in Ohio against a non-resident owner because of his failure to pay the tax,¹³ and penalties for violation of specified sections of the act.¹⁴

*Reciprocity Agreements*¹⁵

A provision which was inserted in the act late in the course of legislative consideration authorizes the attorney general, the tax commissioner, and a designated member of the public utilities commission to enter into certain reciprocal agreements with other states. These reciprocal agreements may exempt the owners of motor vehicles duly registered in another state from the Ohio highway use tax providing certain conditions exist. These conditions are (1) that the other state levies a highway use tax in addition to motor vehicle registration fees, (2) that the resident of such other state has complied with the laws of his state of residence pertaining to the registration and taxation of motor vehicles and continues to do so while operating in Ohio, and (3) that the owners and operators of motor vehicles registered in Ohio are exempt from all obligations pertaining to the registration and taxation of motor vehicles in such other state.

⁹ Sec. 10

¹⁰ OHIO REVISED CODE, §§ 5739.01-5739.99, 5741.01-5741.99

¹¹ Sec. 10

¹² Secs. 3 and 11

¹³ Sec. 12

¹⁴ Secs. 4 and 5

¹⁵ Sec. 15

The reciprocity board, so designated, has recently announced that it will not enter into any reciprocal agreements with other states until after a period of experience with the new law.

*Specific Exemptions*¹⁶

In addition to the exclusion of vehicular units having less than three axles, the Act specifically exempts from its registration and taxation provisions motor vehicles, commercial cars or commercial tractors owned and operated by the United States, this state or any political subdivision thereof.

¹⁶Sec. 13