

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2233 Session of 2020

INTRODUCED BY GREINER, HILL-EVANS, ROTHMAN, NEILSON, DUNBAR, RYAN, PICKETT, SAINATO, JAMES, FEE, LONGIETTI, HICKERNELL, MENTZER, ZIMMERMAN, GALLOWAY, ROEBUCK, HERSHEY, CONKLIN, CIRESI AND GILLEN, JANUARY 17, 2020

AS REPORTED FROM COMMITTEE ON FINANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, FEBRUARY 5, 2020

AN ACT

1 Amending Title 75 (Vehicles) of the Pennsylvania Consolidated
2 Statutes, in liquid fuels and fuels tax, further providing <--
3 for definitions, providing for exempt entity use, sale and <--
4 delivery POLITICAL SUBDIVISION AND VOLUNTEER SERVICE USE of <--
5 tax-free motor fuels and further providing for examination of
6 records and equipment.

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

9 Section 1. Section 9002 of Title 75 of the Pennsylvania <--
10 Consolidated Statutes is amended by adding definitions to read:
11 § 9002. Definitions.

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

15 \* \* \*

16 "Motor fuels." Liquid fuels or fuels. This term does not
17 include alternative fuels.

18 \* \* \*

1 ~~"Political subdivision." A county, city, borough,~~  
2 ~~incorporated town, township, school district, vocational school~~  
3 ~~district and county institution district.~~

4 ~~"Registered distributor." A distributor that holds a valid~~  
5 ~~liquid fuels or fuels tax permit issued by the department.~~

6 \* \* \*

7 ~~"Tax free motor fuels." Motor fuels upon which the oil~~  
8 ~~company franchise tax has not been imposed.~~

9 ~~"Volunteer service." A volunteer fire company, volunteer~~  
10 ~~ambulance service or volunteer rescue squad.~~

11 Section 2. Title 75 is amended by adding a section to read:  
12 ~~§ 9004.1. Exempt entity use, sale and delivery of tax free~~  
13 ~~motor fuels.~~

14 ~~(a) Limitations. An exempt entity:~~

15 ~~(1) May not be a distributor.~~

16 ~~(2) May use tax free motor fuels only for its own~~  
17 ~~official business purposes.~~

18 ~~(3) May not sell or deliver tax free motor fuels to any~~  
19 ~~other person or exempt entity except to political~~  
20 ~~subdivisions as provided under subsection (c).~~

21 ~~(4) May purchase and take delivery of tax free motor~~  
22 ~~fuels only from a registered distributor except for volunteer~~  
23 ~~services as provided under subsection (c).~~

24 ~~(5) Shall cooperate with the department during an~~  
25 ~~investigation or audit related to the use, sale or delivery~~  
26 ~~of tax free motor fuels provided for in this chapter.~~

27 ~~(b) Penalties. An exempt entity that improperly uses, sells~~  
28 ~~or delivers tax free motor fuels shall:~~

29 ~~(1) Pay to the Commonwealth the tax imposed by section~~  
30 ~~9004(b) (relating to imposition of tax, exemptions and~~

1 ~~deductions).~~

2 ~~(2) Pay an additional penalty equal to 100% of the tax~~  
3 ~~imposed by section 9004(b).~~

4 ~~(3) Become subject to any other penalties, summary~~  
5 ~~offenses or misdemeanors that may be imposed upon~~  
6 ~~distributors who violate the provisions of this chapter.~~

7 ~~(c) Conditions on sales or deliveries to volunteer~~  
8 ~~services. A political subdivision may sell or deliver tax free~~  
9 ~~motor fuels to a volunteer service if:~~

10 ~~(1) The political subdivision's bulk storage tank from~~  
11 ~~which the volunteer service removes tax free motor fuels~~  
12 ~~contains only tax free motor fuels that are either owned~~  
13 ~~exclusively by the political subdivision or owned by both the~~  
14 ~~political subdivision and one or more volunteer services~~  
15 ~~pursuant to a valid commingling agreement as provided for in~~  
16 ~~subsection (d).~~

17 ~~(2) The volunteer service provides services to the~~  
18 ~~political subdivision and the residents of the political~~  
19 ~~subdivision.~~

20 ~~(3) The volunteer service takes delivery of the motor~~  
21 ~~fuel directly from a bulk storage tank owned by the political~~  
22 ~~subdivision.~~

23 ~~(4) The withdrawal of tax free motor fuels from the~~  
24 ~~political subdivision's bulk storage tank by a volunteer~~  
25 ~~service is considered a nontaxable use of the fuel by the~~  
26 ~~political subdivision and the fuel is placed directly into~~  
27 ~~the vehicle propulsion tank of a vehicle owned and operated~~  
28 ~~by the volunteer service.~~

29 ~~(5) Prior to the volunteer service's withdrawal of tax~~  
30 ~~free motor fuels from the political subdivision's bulk~~

~~storage tank, the volunteer service and political subdivision enters into a written agreement that contains:~~

~~(i) Controls and security procedures for the removal of tax free motor fuels from the bulk storage tank by the volunteer service.~~

~~(ii) Recordkeeping compliance provisions similar to this chapter's provisions that apply to distributors.~~

~~(d) Exempt entity use of commingled tax free motor fuels.~~

~~An exempt entity may withdraw tax free motor fuels from a bulk storage tank containing only commingled tax free motor fuels if:~~

~~(1) The bulk storage tank is located on property owned by one of the exempt entities that owns tax free motor fuels placed into the tank and the exempt entity owning the property is the owner of the bulk storage tank.~~

~~(2) Each exempt entity commingling tax free motor fuels in the bulk storage tank contracts separately with a distributor for purchase and delivery of tax free motor fuels placed into the tank.~~

~~(3) Each exempt entity owning tax free motor fuels in the bulk storage tank enters into an agreement with the exempt entity that owns the bulk storage tank and the agreement includes provisions pertaining to:~~

~~(i) Purchase from distributors of tax free motor fuels placed into the bulk storage tank.~~

~~(ii) Method of delivery of tax free motor fuels into the bulk storage tank.~~

~~(iii) Storage of tax free motor fuels in the bulk storage tank.~~

~~(iv) Removal of tax free motor fuels from the bulk storage tank.~~

~~(v) Compliance with all of the recordkeeping requirements for liquid fuels and fuels as provided in this chapter.~~

~~(vi) Acknowledgment of joint and several liability for loss, misuse or undocumented withdrawals of tax free motor fuels from the bulk storage tank.~~

~~(4) The exempt entity does not withdraw from the bulk storage tank any amount of commingled tax free motor fuels for which the exempt entity has not previously paid a distributor to deliver into the tank.~~

~~(5) Tax paid motor fuels are not placed into a bulk storage tank containing commingled fuels.~~

~~(6) Only exempt entities may own tax free motor fuels placed into or removed from the bulk storage tank containing commingled tax free motor fuels.~~

~~(7) All of the recordkeeping compliance provisions of this chapter are satisfied by each entity owning commingled tax free motor fuels in the bulk storage tank.~~

~~(c) Distributors not liable. A registered distributor holding a permit that sold or delivered tax free motor fuels to an exempt entity under this section shall not be responsible for the tax imposed by this chapter if:~~

~~(1) the purchaser subsequently sells or delivers the tax free motor fuels to another entity; or~~

~~(2) the purchaser subsequently uses the motor fuels for a taxable purpose.~~

SECTION 1. TITLE 75 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED BY ADDING A SECTION TO READ:

§ 9004.1. POLITICAL SUBDIVISION AND VOLUNTEER SERVICE USE OF TAX-FREE MOTOR FUELS.

<--

1 (A) LIMITATIONS.--AN EXEMPT ENTITY:

2 (1) MAY NOT BE A DISTRIBUTOR.

3 (2) MAY USE TAX-FREE MOTOR FUELS ONLY FOR ITS OWN  
4 OFFICIAL BUSINESS PURPOSES.

5 (3) MAY NOT SELL OR DELIVER TAX-FREE MOTOR FUELS TO ANY  
6 OTHER PERSON OR EXEMPT ENTITY.

7 (4) MAY PURCHASE AND TAKE DELIVERY OF TAX-FREE MOTOR  
8 FUELS ONLY FROM A DISTRIBUTOR.

9 (5) SHALL COOPERATE WITH THE DEPARTMENT DURING AN  
10 INVESTIGATION OR AUDIT RELATED TO THE USE, SALE OR DELIVERY  
11 OF TAX-FREE MOTOR FUELS PROVIDED FOR IN THIS CHAPTER.

12 (B) PENALTY.--AN EXEMPT ENTITY THAT IMPROPERLY USES, SELLS  
13 OR DELIVERS TAX-FREE MOTOR FUELS SHALL:

14 (1) PAY THE TAX IMPOSED UNDER SECTION 9004(B) (RELATING  
15 TO IMPOSITION OF TAX, EXEMPTIONS AND DEDUCTIONS).

16 (2) PAY AN ADDITIONAL PENALTY EQUAL TO 100% OF THE TAX  
17 IMPOSED UNDER SECTION 9004(B).

18 (3) BE SUBJECT TO ANY OTHER PENALTY, SUMMARY OFFENSE OR  
19 MISDEMEANOR THAT MAY BE IMPOSED UPON DISTRIBUTORS WHO VIOLATE  
20 THE PROVISIONS OF THIS CHAPTER.

21 (C) EXEMPT ENTITY USE OF COMMINGLED TAX-FREE MOTOR FUELS.--  
22 AN EXEMPT ENTITY MAY WITHDRAW TAX-FREE MOTOR FUELS FROM A BULK  
23 STORAGE TANK CONTAINING ONLY COMMINGLED TAX-FREE MOTOR FUELS IF  
24 THE FOLLOWING APPLY:

25 (1) THE BULK STORAGE TANK IS LOCATED ON PROPERTY OWNED  
26 BY ONE OF THE EXEMPT ENTITIES THAT OWNS TAX-FREE MOTOR FUELS  
27 PLACED INTO THE TANK AND THE EXEMPT ENTITY OWNING THE  
28 PROPERTY IS THE OWNER OF THE BULK STORAGE TANK.

29 (2) EACH EXEMPT ENTITY COMMINGLING TAX-FREE MOTOR FUELS  
30 IN THE BULK STORAGE TANK CONTRACTS SEPARATELY WITH A

1 DISTRIBUTOR FOR PURCHASE AND DELIVERY OF TAX-FREE MOTOR FUELS  
2 PLACED INTO THE TANK.

3 (3) EACH EXEMPT ENTITY OWNING TAX-FREE MOTOR FUELS IN  
4 THE BULK STORAGE TANK ENTERS INTO AN AGREEMENT WITH THE  
5 EXEMPT ENTITY THAT OWNS THE BULK STORAGE TANK AND THE  
6 AGREEMENT INCLUDES PROVISIONS PERTAINING TO:

7 (I) PURCHASE FROM DISTRIBUTORS OF TAX-FREE MOTOR  
8 FUELS PLACED INTO THE BULK STORAGE TANK;

9 (II) METHOD OF DELIVERY OF TAX-FREE MOTOR FUELS INTO  
10 THE BULK STORAGE TANK;

11 (III) CONTROLS AND SECURITY PROCEDURES FOR THE  
12 REMOVAL OF TAX-FREE MOTOR FUELS FROM THE BULK STORAGE  
13 TANK BY THE VOLUNTEER SERVICE;

14 (IV) STORAGE OF TAX-FREE MOTOR FUELS IN THE BULK  
15 STORAGE TANK;

16 (V) REMOVAL OF TAX-FREE MOTOR FUELS FROM THE BULK  
17 STORAGE TANK;

18 (VI) COMPLIANCE WITH ALL OF THE RECORDKEEPING  
19 REQUIREMENTS FOR LIQUID FUELS AND FUELS AS PROVIDED UNDER  
20 THIS CHAPTER; AND

21 (VII) ACKNOWLEDGMENT OF JOINT AND SEVERAL LIABILITY  
22 FOR LOSS, MISUSE OR UNDOCUMENTED WITHDRAWALS OF TAX-FREE  
23 MOTOR FUELS FROM THE BULK STORAGE TANK.

24 (4) THE EXEMPT ENTITY DOES NOT WITHDRAW FROM THE BULK  
25 STORAGE TANK ANY AMOUNT OF COMMINGLED TAX-FREE MOTOR FUELS  
26 FOR WHICH THE EXEMPT ENTITY HAS NOT PREVIOUSLY PAID A  
27 DISTRIBUTOR TO DELIVER INTO THE TANK, EXCEPT AS PROVIDED FOR  
28 VOLUNTEER SERVICES UNDER SUBSECTION (D).

29 (5) TAX-PAID MOTOR FUELS ARE NOT PLACED INTO A BULK  
30 STORAGE TANK CONTAINING COMMINGLED TAX-FREE MOTOR FUELS.

1           (6) ONLY EXEMPT ENTITIES MAY OWN TAX-FREE MOTOR FUELS  
2 PLACED INTO OR REMOVED FROM THE BULK STORAGE TANK CONTAINING  
3 COMMINGLED TAX-FREE MOTOR FUELS.

4           (7) ALL OF THE RECORDKEEPING COMPLIANCE PROVISIONS OF  
5 THIS CHAPTER ARE SATISFIED BY EACH ENTITY OWNING COMMINGLED  
6 TAX-FREE MOTOR FUELS IN THE BULK STORAGE TANK.

7           (D) CONDITIONS ON USE OF MOTOR FUELS TRANSFERRED TO  
8 VOLUNTEER SERVICES FROM POLITICAL SUBDIVISIONS.--A VOLUNTEER  
9 SERVICE MAY USE TAX-FREE MOTOR FUELS TRANSFERRED TO THE  
10 VOLUNTEER SERVICE FROM A POLITICAL SUBDIVISION IF THE FOLLOWING  
11 APPLY:

12           (1) THE POLITICAL SUBDIVISION'S BULK STORAGE TANK FROM  
13 WHICH THE VOLUNTEER SERVICE REMOVES TAX-FREE MOTOR FUELS  
14 CONTAINS ONLY TAX-FREE MOTOR FUELS THAT ARE EITHER OWNED  
15 EXCLUSIVELY BY THE POLITICAL SUBDIVISION OR OWNED BY BOTH THE  
16 POLITICAL SUBDIVISION AND ONE OR MORE VOLUNTEER SERVICES  
17 PURSUANT TO A VALID COMMINGLING AGREEMENT AS PROVIDED FOR  
18 UNDER SUBSECTION (C) (3).

19           (2) THE VOLUNTEER SERVICE PROVIDES SERVICES TO THE  
20 POLITICAL SUBDIVISION AND THE RESIDENTS OF THE POLITICAL  
21 SUBDIVISION.

22           (3) THE VOLUNTEER SERVICE TAKES DELIVERY OF THE MOTOR  
23 FUEL DIRECTLY FROM A BULK STORAGE TANK OWNED BY THE POLITICAL  
24 SUBDIVISION.

25           (4) TAX-FREE MOTOR FUELS WITHDRAWN FROM THE POLITICAL  
26 SUBDIVISION'S BULK STORAGE TANK BY A VOLUNTEER SERVICE MUST  
27 BE PLACED DIRECTLY INTO THE VEHICLE PROPULSION TANK OF A  
28 VEHICLE OWNED AND OPERATED BY THE VOLUNTEER SERVICE.

29           (E) DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES WHEN USED  
30 IN THIS SECTION SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS



1 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

2 "EXEMPT ENTITY." A POLITICAL SUBDIVISION OR VOLUNTEER  
3 SERVICE IN ACCORDANCE WITH SECTION 9004(E).

4 "MOTOR FUELS." LIQUID FUELS OR FUELS. THE TERM DOES NOT  
5 INCLUDE ALTERNATIVE FUELS.

6 "POLITICAL SUBDIVISION." A COUNTY, CITY, BOROUGH,  
7 INCORPORATED TOWN, TOWNSHIP, SCHOOL DISTRICT, VOCATIONAL SCHOOL  
8 DISTRICT OR COUNTY INSTITUTION DISTRICT.

9 "TAX-FREE MOTOR FUELS." MOTOR FUELS UPON WHICH THE OIL  
10 COMPANY FRANCHISE TAX UNDER 9004(B) HAS NOT BEEN IMPOSED.

11 "VOLUNTEER SERVICE." A VOLUNTEER FIRE COMPANY, VOLUNTEER  
12 AMBULANCE SERVICE OR VOLUNTEER RESCUE SQUAD.

13 Section 3 2. Section 9008 of Title 75 is amended by adding <--  
14 subsections to read:

15 § 9008. Examination of records and equipment.

16 \* \* \*

17 (c) Consumer protection.--Notwithstanding subsection (a) or  
18 (b) or section 731 of the act of April 9, 1929 (P.L.343,  
19 No.176), known as The Fiscal Code, incorrect liquid fuel, fuel  
20 or alternative fuel composition information, including octane  
21 values, discovered by the department upon examination of storage  
22 tank contents or related records may be disclosed to an  
23 appropriate enforcement authority for investigation.

24 (d) Public safety.--Notwithstanding subsection (a) or (b) or  
25 section 731 of The Fiscal Code, any suspected violation that  
26 could pose a threat to public safety discovered by the  
27 department during an examination authorized by this section may  
28 be disclosed to an appropriate enforcement authority for  
29 investigation.

30 Section 4 3. This act shall take effect immediately. <--