

To: The New Jersey Law Review Commission
From: Samuel M. Silver, Dep. Director¹
Re: Use of the Term “Autobus” in New Jersey’s Motor Fuel Tax Act, N.J.S. § 54:39-112(a)(1) as discussed in *Senior Citizens United Community Services, Inc. v. Director, Division of Taxation*, 32 N.J. Tax 381, 385 (2021).
Date: May 09, 2022

MEMORANDUM

Project Summary

In New Jersey certain transportation services are exempt from paying taxes on the fuel that they purchase.² Both the Petroleum Products Gross Receipts Tax Act and the Motor Fuel Tax Act contain provisions to exempt specific bus services from the tax on fuel.³ While both Acts utilize the term “autobus” neither exemption defines the term. A definition of the term “autobus,” however, is found in the definition section of the Public Utilities statutes.⁴

In *Senior Citizens United Community Services, Inc. v. Director, Division of Taxation*, the Tax Court considered whether the Title 48 (Public Utilities) definition of “autobus” has been incorporated into Title 54 (Taxation) and thereby excludes non-profit corporations operating “special paratransit vehicles” from the exemptions set forth in the Motor Fuel Tax and Petroleum Products Gross Receipts Acts.⁵ The Court determined that the Motor Fuel Tax statute, N.J.S. 54:39-112, was “confusing and not a model of clarity,” and that it was compelled to examine a half century of legislative history to ascertain the intent of the Legislature.⁶

When discussing the statutes, the court opined that “[a] full understanding of what the Legislature sought to accomplish... is impossible to discern without reviewing the history and context of the legislative enactments....”⁷ After conducting an examination of the intersection of taxation and public utilities regulation, the court concluded that “special and rural transportation services... are eligible for the Motor Fuel Tax and the Petroleum Products Gross Receipts Tax exemption.”⁸

Statutes Considered

N.J.S. 54:39-112 (a)(1), provides in relevant part,

a. Fuel used for the following purposes is exempt from the tax imposed by the “Motor Fuel Tax Act,” P.L.2010, c. 22 (C.54:39-101 et seq.), and a refund of the tax imposed by subsection a. of section 3 of P.L.2010, c. 22 (C.54:39-103) may be

¹ Preliminary research and drafting performed by Farida Shawkat, Legislative Law Clerk, during her tenure with the NJLRC, Spring of 2022.

² N.J. STAT. ANN § 54:15B-2.1 (West 2022); N.J. STAT. ANN § 54:39-112 (West 2022).

³ *Id.*

⁴ N.J. STAT. ANN. § 48:4-1 (West 2022).

⁵ 32 N.J. Tax 381, 385 (2022).

⁶ *Id.* at 386.

⁷ *Id.* at 405-06.

⁸ *Id.* at 406.

claimed by the consumer providing proof the tax has been paid and no refund has been previously issued:

(1) Buses *while* being operated over the highways of this State in those municipalities to which the operator has paid a monthly franchise tax for the use of the streets therein under the provisions of R.S.48:16-25 *and* buses *while* being operated over the highways of this State in a regular route bus operation as defined in R.S.48:4-1 *and* under operating authority conferred pursuant to R.S.48:4-3, *or while* providing bus service under a contract with the New Jersey Transit Corporation *or* under a contract with a county for special *or* rural transportation bus service subject to the jurisdiction of the New Jersey Transit Corporation pursuant to P.L.1979, c. 150 (C.27:25-1 et seq.), *and* buses providing commuter bus service which receive *or* discharge passengers in New Jersey. For the purpose of this paragraph “commuter bus service” means regularly scheduled passenger service provided by motor vehicles whether within or across the geographical boundaries of New Jersey and utilized by passengers using reduced fare, multiple ride or commutation tickets and shall not include charter bus operations for the transportation of enrolled children and adults referred to in subsection c. of R.S.48:4-1 and “regular route service” does not mean a regular route in the nature of special bus operation or a casino bus operation[....]⁹

Background

Senior Citizens United Community Services, Inc. (SCUCS), a non-profit corporation, provides “special and rural transportation services” for the senior citizens and the disabled through contracts with New Jersey Transit and county governments.¹⁰ There are some New Jersey counties that provide these services directly to the recipients. Two counties, however, have engaged SCUCS to provide these services.¹¹

SCUCS receives funding for its services from multiple sources. The State provides the funding for SCUCS’ services through the Senior Citizen and Disabled Resident Transportation Assistance Act.¹² In addition, SCUCS receives federal formula grants for the enhanced mobility of individuals with disabilities and for rural area transportation.¹³

To provide the transportation services enumerated in its contracts, SCUCS entered into one-year contracts with two local gas stations to purchase fuel at retail rates with payments remitted monthly.¹⁴ SCUCS sought a refund for both the Motor Fuel Tax and the Petroleum Products

⁹ N.J.S. STAT. ANN. § 54:39-112 (a)(1) (emphasis added). The language of the Petroleum Products Gross Receipts Tax exemptions in N.J.S. 54:15B-1, is identical to that of the Motor Fuel Tax exemptions and has not been reproduced for the sake of brevity.

¹⁰ *Id.* at 383 (noting that transportation is provided for employment, mall shopping, non-emergency medical, nutrition site, personal business, sheltered workshop, shopping and special events).

¹¹ *Id.*

¹² *Id.* N.J. STAT. ANN. § 37:25-25 (West 2022).

¹³ *Id.* 49 U.S.C. § 5310 and § 5311.

¹⁴ *Senior Citizens United Cmty. Services*, N.J. Tax 381 at 384.

Gross Receipts Tax.¹⁵ The Director of the Division of Taxation (Director) denied SCUCS's request.¹⁶ SCUCS filed an appeal from the Director's decision.¹⁷ The parties then cross-moved for summary judgment as to SCUCS's the eligibility for such refunds¹⁸

Analysis

In *Senior Citizens United Community Services, Inc. v. Director, Division of Taxation*, the Tax Court considered whether the definition of the term "autobus" as set forth in the Public Utilities statutes¹⁹ has been incorporated into the Taxation statutes²⁰ and thereby excludes certain types of bus service from tax exemptions otherwise permitted pursuant to the Motor Vehicle Fuel Tax and the Petroleum Products Gross Receipts Tax.²¹ The disagreement of the parties on this issue formed the basis of each cross-motion for summary judgment.

The Director of Division of Taxation (Director) argued that SCUCS was not operating an autobus, as defined in N.J.S. 48:4-1.²² The Director also maintained that the term autobus excludes "special paratransit vehicles," the definition of which includes "vehicles used by a county special or rural bus service transporting senior citizens and the disabled."²³ According to the Director, because SCUCS provided paratransit services, it was not eligible for either tax exemption.²⁴ Conversely, SCUCS maintained that the Title 48 definition of "autobus" has not been incorporated into Title 54 and that the "purpose of the paratransit amendment is not. . . to increase the costs of providing special and rural bus services which would result from the denial of the exemption."²⁵

For the court, the issue represented the intersection of complex areas of taxation and public utilities regulation that could only be understood after reviewing the history and context of the legislative enactments beginning in 1927. Noting that the sentence at the center of the instant controversy was 112 words long and contained ten conjunctions, the court opined that "[o]n its face and without the valuable context provided by the legislative history, the statute is confusing and not a model of clarity."²⁶

• *The 1927 Motor Fuels Tax*

In 1927, to raise the revenue that was necessary to improve New Jersey roadways, the State instituted a tax on motor fuels.²⁷ Those who engaged in bus transportation were exempt from the

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ N.J. STAT. ANN. § 48:4-1 (West 2022).

²⁰ Compare N.J. STAT. ANN. § 48:4-1 (West 2022) (noting the absence of a definition for the term autobus).

²¹ *Id.* at 385.

²² *Id.*

²³ *Id.* See N.J.S. 48:4-1.

²⁴ *Id.* See N.J.S. 48:4-1.

²⁵ *Id.*

²⁶ *Id.* at 386.

²⁷ *Id.*

motor fuels tax as long they paid the municipal franchise tax of five percent on gross receipts.²⁸ The tax statute involving motor fuels would not undergo a comprehensive revision until the mid-1930s.

- *A Comprehensive Revision in 1930s*

The foundation of the current Motor Fuel Tax statute dates back to 1935.²⁹ With the codification of the Revised Statutes, the “Legislature refined the general exemption for bus transportation into two specific exemptions.”³⁰ The first exemption involved bus services and the other involved jitney bus service that was regulated by municipalities.³¹ The designation of two specific exemptions did not eliminate the required payment of the municipal franchise tax for applicants to qualify for the exemption.³² The fuel tax and its requirements would remain unchanged for the next thirty-five years.

- *Reforms of the 1970s*

In the early 1970s, the rise of private automobile use threatened bus service in New Jersey.³³ In 1972, the Legislature eliminated the fifty-six year old municipal franchise tax for certain regular route bus service to encourage public bus transportation.³⁴ New Jersey’s move to encourage public bus transportation coincided with a Congressional push to “ensure the greater availability of bus service[, by way of grants] to support special transportation for senior citizens[, . . .] the disabled . . . and rural transportation.”³⁵ The State would ultimately take the lead role in coordinating the funding received from the federal government for both special and rural transportations services.³⁶

- *The Amendments of the 1980s*

In 1983, the Legislature enacted the Senior Citizen and Disabled Resident Transportation Assistance Act.³⁷ The Legislature required New Jersey Transit to establish and administer the Senior Citizen and Disabled Resident Transportation Assistance Program.³⁸ This program incorporated the participation of third-party operators.³⁹ In addition, for the first time since the 1930s the Legislature added two new fuel tax exemptions to the statute – an exemption for “special and rural transportation” and one for commuter bus service.⁴⁰

²⁸ *Id.* at 387. L. 1916, c. 136 (Kates’ Act allowed municipalities to regulate the burgeoning bus transportation industry).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* (noting that the 1937 statute would ultimately be repealed and replaced with N.J.S. 54:39-112(a)(1)).

³² *Id.*

³³ *Id.* at 388.

³⁴ *Id.* L. 1972, c. 211 § 5 (exempting autobuses operated over the highways in municipalities to which the operator paid a monthly franchise tax for the use of the streets under the provisions of R.S. 48:16-25 and autobuses while operated over the highways that provide regular route passengers service).

³⁵ *Id.* at 388.

³⁶ *Id.* at 389. Governor’s Task force on Transportation Services for Elderly and Handicapped Persons, *Coordinating Specialized Transportation Services in New Jersey* 3, 8 (1979).

³⁷ *Id.* at 389 (quoting L. 1983, c. 578.)

³⁸ *Id.* (quoting N.J.S. § 27:25-28(a).)

³⁹ *Id.* at 390.

⁴⁰ *Id.* at 391.

The 1985 statutory amendments formed the basis for the current statute.⁴¹ The four categories of exemptions for bus transportation included: local jitney bus service; autobuses providing regular route intrastate service while operating under a certificate of public convenience and necessity issued by the state pursuant to N.J.S. 48:4-3; bus service under contract with the county to provide special or rural transportation; and interstate or intrastate commuter bus service.⁴²

In *Senior Citizens United Community Services*, the Director set forth two arguments. The Director argued that the word “autobus,” as set forth in the “regular route passenger exemption,” also applied to the special or rural transportation exemption.⁴³ In addition, the Director maintained that because the regular route exemption contains a reference to Title 48, the definition of autobus in Title 48 should be incorporated into Title 54, and applied to N.J.S. 54:39-112(a)(1).⁴⁴ The Director argued that because the definition of autobus in N.J.S. 48:4-1 specifically excludes “special paratransit vehicles,” SCUCS was not entitled to the requested exemptions.⁴⁵ The court rejected these arguments.

As a preliminary matter, the court stated it was not clear that the word “autobus” referenced in the regular route service exemption had been incorporated into the rural transportation services exemption.⁴⁶ In rejecting the Director’s Argument, the court opined that even if the term autobus was incorporated into the statute, the “emphasis of the statute is on the *service, not the vehicle.*”⁴⁷ The court also noted that Title 48 contains three definitions of the term autobus and ~~that~~ the Director did not proffer any explanation for the selected statutory definition.⁴⁸ The court further explained that “when the Legislature sought to include a Title 48 exemption provision [in the Motor Fuel Tax Act] it did so explicitly.”⁴⁹ Finally, the court noted that each of the definitions contained in N.J.S. 48:4-1 use the introductory language – “as used in this chapter” – thereby limiting their application to Chapter 4 of Title 48.⁵⁰

The court concluded that “neither the express words of the 1992 enactment, nor anything in the legislative history, indicated an intent that the definitional change of autobus in N.J.S. [] 48:4-1 was intended to apply to the motor fuel tax exemption and Title 54.”⁵¹ The Court recognized that “the clear legislative purpose of this act is to relieve the counties and third-party providers of the financial expense that would flow from DOT regulation.”⁵² The court declined to engraft a

⁴¹ *Id.* at 390-94 (discussing the evolution of the current statute).

⁴² *Id.* (quoting N.J.S. § 27:25-28(a).)

⁴³ *Id.*

⁴⁴ *Id.* at 396.

⁴⁵ *Id.*

⁴⁶ *Id.* at 394.

⁴⁷ *Id.* at 395 (emphasis added) (noting that the history of the statute, dating back to 1935, does not define autobus, rather the service provided and whether the bus paid the franchise tax).

⁴⁸ *Id.* at 396 (noting the term autobus is defined in N.J.S. 48:4-1, 4-2.2, and 16-23).

⁴⁹ *Id.* at 397 (observing that in 1987, N.J.S. 54:39-112(a)(1) was amended explicitly reference N.J.S. 48:4-1’s definition of regular route bus operation).

⁵⁰ *Id.* at 399.

⁵¹ *Id.*

⁵² *Id.*

statutory definition of “autobus” from Title 48 that would limit the special or rural transportation bus service exemption found in N.J.S. 54:39-112 (a)(1).

The Court denied the Director’s motion for summary judgment and found SCUCS “eligible for a refund of the Motor Fuel Tax and the Petroleum Products Gross Receipts Tax” that had already been paid.⁵³

Pending Legislation

There is currently no pending legislation on the use of the term “autobus” in New Jersey’s Motor Fuel Tax Act or the Petroleum Products Gross Receipts Tax.⁵⁴

Conclusion

Staff seeks authorization to engage in additional research to determine whether N.J.S. 54:39-112(a) and N.J.S. 54:15B-2.1(b)(1) can be made easier to read and be modified to clarify that the term “autobus” as set forth in Title 48 does not apply to the motor fuel tax exemption and Title 54.

⁵³ *Id.* at 406.

⁵⁴ *But see* S.B. 1826, 2022 Leg., 220th Sess. (N.J. 2022) (proposing decreases to the petroleum products gross receipts tax rate on certain petroleum products and having been introduced each year since the 2016-2017 session of the Legislature).

For Reference

54:15B-2.1. Gross receipts; exclusion; highway fuel exemption; refund

a. “Gross receipts,” as otherwise defined by section 2 of P.L.1990, c. 42 (C.54:15B-2), shall not include receipts from sales of petroleum products used by marine vessels engaged in interstate or foreign commerce and receipts from sales of aviation fuels used by common carriers in interstate or foreign commerce other than the “burnout” portion which shall be taxable pursuant to rules promulgated by the director.

b. Highway fuel used for the following purposes is exempt from the tax imposed by section 3 of P.L.1990, c. 42 (C.54:15B-3), and a refund of the tax imposed by that section may be claimed by the consumer providing proof the tax has been paid and no refund has been previously issued:

(1) autobuses while being operated over the highways of this State in those municipalities to which the operator has paid a monthly franchise tax for the use of the streets therein under the provisions of R.S.48:16-25 and autobuses while being operated over the highways of this State in a regular route bus operation as defined in R.S.48:4-1 and under operating authority conferred pursuant to R.S.48:4-3, or while providing bus service under a contract with the New Jersey Transit Corporation or under a contract with a county for special or rural transportation bus service subject to the jurisdiction of the New Jersey Transit Corporation pursuant to P.L.1979, c. 150 (C.27:25-1 et seq.), and autobuses providing commuter bus service which receive or discharge passengers in New Jersey. For the purpose of this paragraph “commuter bus service” means regularly scheduled passenger service provided by motor vehicles whether within or across the geographical boundaries of New Jersey and utilized by passengers using reduced fare, multiple ride, or commutation tickets and shall not include charter bus operations for the transportation of enrolled children and adults referred to in subsection c. of R.S.48:4-1 and “regular route service” does not mean a regular route in the nature of special bus operation or a casino bus operation;

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