



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report Addressing the use of the Term “Autobus” in New Jersey’s Motor Fuel Tax Act and the Petroleum Products Gross Receipts Tax Act

July 11, 2022

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8.*

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **September 19, 2022.**

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Project Summary

In New Jersey, certain transportation services are exempt from paying taxes on the fuel that they purchase.¹ 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.² While both Acts utilize the term “autobus,” neither defines the term. The term “autobus” is, however, defined three times in the Public Utilities statutes.³

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,” suggested by the Director, 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.⁴ The Court stated 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.⁵

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....”⁶ 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.”⁷

The Commission recommends the clarification and simplification of the motor fuel tax exemptions in both the Motor Fuel Tax and the Petroleum Products Gross Receipts Tax Acts.

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

² *Id.*

³ Compare N.J. STAT. ANN § 48:4-1 (West 2022) (defining “autobus” as “any motor vehicle or motorbus operated over public highways or public places in this State for the transportation of passengers for hire in intrastate business, whether used in regular route, casino or special bus operations, notwithstanding such motor vehicle or motorbus may be used in interstate commerce.”) with N.J. STAT. ANN § 48:4-2.20 (West 2022) (defining “autobus” as “any motor vehicle or motorbus operated over public highways or public places in this state for the transportation of passengers for hire in intrastate business which is regulated by and subject to the provisions of Title 48 of the Revised Statutes.”) and N.J. STAT. ANN § 48:16-23 (West 2022) (defining “autobus” to include “any automobile or motor bus, commonly called jitney, with a carrying capacity of not more than 13 passengers, operated under municipal consent upon a route established wholly within the limits of a single municipality....”).

⁴ *Senior Citizens United Community Services, Inc. v. Director, Division of Taxation*, 32 N.J. Tax 381, 385 (2021).

⁵ *Id.* at 386.

⁶ *Id.* at 405-06.

⁷ *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[....]⁸

Background

Senior Citizens United Community Services, Inc. (SCUCS) is a non-profit corporation that provides “special and rural transportation services” for senior citizens and individuals with disabilities through contracts with New Jersey Transit and county governments.⁹ Although some New Jersey counties provide these services directly to recipients, two counties have engaged SCUCS to provide the services.¹⁰

SCUCS receives funding from multiple sources. The State of New Jersey provides funding for SCUCS’s services through the Senior Citizen and Disabled Resident Transportation Assistance Act.¹¹ In addition, SCUCS receives federal formula grants for the enhanced mobility of individuals with disabilities and for rural area transportation.¹²

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

⁸ 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(b)(1), is identical to that of the Motor Fuel Tax exemptions and, in the interest of brevity, has not been reproduced here. *See infra* Appendix.

⁹ *Senior Citizens United Cmty. Services*, 32 N.J. Tax at 383 (noting that transportation is provided for employment, mall shopping, non-emergency medical, nutrition site, personal business, sheltered workshop, shopping and special events).

¹⁰ *Id.*

¹¹ *Id.* N.J. STAT. ANN. § 37:25-25 (West 2022).

¹² *Id.* 49 U.S.C. § 5310 and § 5311.

remitted monthly.¹³ SCUCS sought a refund for both the Motor Fuel Tax and the Petroleum Products Gross Receipts Tax.¹⁴ The Director of the Division of Taxation (Director) denied SCUCS’s request.¹⁵ SCUCS filed an appeal from the Director’s decision.¹⁶ The parties then cross-moved for summary judgment as to SCUCS’s the eligibility for the refunds¹⁷

Analysis

In *Senior Citizens United Community Services, Inc. v. Director, Division of Taxation*, the Tax Court considered whether the definition of the term “autobus” set forth in Chapter Four of the Public Utilities statutes¹⁸ has been incorporated into Chapter 39 of the Taxation statutes¹⁹ thereby excluding certain types of bus service from tax exemptions otherwise permitted pursuant to the Motor Vehicle Fuel Tax Act and the Petroleum Products Gross Receipts Tax Act.²⁰ The parties each moved for summary judgment.²¹

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 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

The issue raised by the parties represented the intersection of complex areas of taxation and public utilities regulation that the Court explained could only be understood after reviewing the history of the legislative enactments beginning in 1927.²⁶ The first sentence of N.J.S. 54:39-112(a)(1) and N.J.S. 54:15B-2.1(b)(1) is 112 words long and contains ten conjunctions. The syntax of this sentence caused the Court to state 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.”²⁷

• *The 1927 Motor Fuel Tax*

¹³ *Senior Citizens United Cmty. Services*, N.J. Tax 381 at 384.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ N.J. STAT. ANN. § 48:4-1 (West 2022).

¹⁹ Compare N.J. STAT. ANN. § 54:39-102 (West 2022) (noting the absence of a definition for the term autobus).

²⁰ *Id.* at 385.

²¹ *Id.* at 384.

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, 405-06.

²⁷ *Id.* at 386.

In 1927, to raise the revenue necessary to improve New Jersey roadways, the State instituted a tax on motor fuels.²⁸ Those who engaged in bus transportation were exempt from the motor fuels tax as long they paid the municipal franchise tax of five percent on their gross receipts.²⁹ After enactment, the tax statute involving motor fuels would not undergo a comprehensive revision until the mid-1930s.

- *A Comprehensive Revision in the 1930s*

The foundation of the current Motor Fuel Tax statute dates back to 1935.³⁰ With the codification of the Revised Statutes, the “Legislature refined the general exemption for bus transportation into two specific exemptions.”³¹ The first exemption involved *bus services* and the other involved *jitney bus service* that was regulated by municipalities.³² The designation of two specific exemptions did not eliminate the required payment of the municipal franchise tax for applicants to qualify for the exemption.³³ The fuel tax and its requirements remained unchanged for the a little over thirty-five years.

- *Reforms of the 1970s*

In the early 1970s, the rise of private automobile use threatened bus service in New Jersey.³⁴ In 1972, the Legislature eliminated the fifty-six year old municipal franchise tax for certain regular route bus service to encourage public bus transportation.³⁵ New Jersey’s attempt to encourage public bus transportation coincided with a Congressional incentives to “ensure the greater availability of bus service[, by way of grants] to support special transportation for senior citizens and the disabled . . . [and] rural transportation.”³⁶ The State ultimately took the lead role in coordinating the funding received from the federal government for both special and rural transportations services.³⁷

- *The Amendments of the 1980s*

In 1983, the Legislature enacted the Senior Citizen and Disabled Resident Transportation Assistance Act³⁸ and required New Jersey Transit to establish and administer the Senior Citizen and Disabled Resident Transportation Assistance Program.³⁹ This program incorporated the

²⁸ *Id.*

²⁹ *Id.* at 387. L. 1916, c. 136 (Kates’ Act allowed municipalities to regulate the burgeoning bus transportation industry).

³⁰ *Id.*

³¹ *Id.*

³² *Id.* (noting that the 1937 statute would ultimately be repealed and replaced with N.J.S. 54:39-112(a)(1)).

³³ *Id.*

³⁴ *Id.* at 388.

³⁵ *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).

³⁶ *Id.* at 388.

³⁷ *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).

³⁸ *Id.* at 389 (quoting L. 1983, c. 578).

³⁹ *Id.* (quoting N.J.S. § 27:25-28(a)).

participation of third-party operators.⁴⁰ In addition, for the first time since the 1930s, the Legislature added two new fuel tax exemptions to the statute – one for “special and rural transportation” and one for “commuter bus service.”⁴¹

The 1985 statutory amendments created the current statute.⁴² 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.⁴³

- *Arguments of the Director*

In *Senior Citizens United Community Services*, the Director advanced 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.⁴⁴ The Director maintained that because the regular route exemption contained a reference to Title 48 that the definition of autobus in that title should be incorporated into Title 54, and applied to N.J.S. 54:39-112(a)(1).⁴⁵ 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.⁴⁶

The Court rejected the Director’s arguments, stating that it is not clear that the word “autobus” in the “regular route service exemption” had been incorporated into the rural transportation services exemption.⁴⁷ 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.*”⁴⁸ The Court also noted that Title 48 contains three definitions of the term “autobus” and that the Director did not offer any explanation for selecting one statutory definition.⁴⁹ 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.”⁵⁰ Thus, it deemed the absence of such a reference in the rural transportation services exemption significant. Finally, the Court noted that each definition contained in N.J.S. 48:4-1 uses the introductory language “as used in this chapter,” limiting their application to Chapter 4 of Title 48.⁵¹ This language is not present in the rural transportation services exemption.

⁴⁰ *Id.* at 390.

⁴¹ *Id.* at 391.

⁴² *Id.* at 390-94 (discussing the evolution of the current statute).

⁴³ *Id.* (quoting N.J.S. § 27:25-28(a)).

⁴⁴ *Id.*

⁴⁵ *Id.* at 396.

⁴⁶ *Id.* at 385.

⁴⁷ *Id.* at 394.

⁴⁸ *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).

⁴⁹ *Id.* at 396. *See supra* note 1 and accompanying text.

⁵⁰ *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).

⁵¹ *Id.* at 399.

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.”⁵² 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.”⁵³ It declined to engraft a 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.⁵⁴

Pending Bills

There are currently no pending bills concerning the use of the term “autobus” in New Jersey’s Motor Fuel Tax Act.⁵⁵

One bill, S1826, proposes to decrease petroleum products gross receipts tax rate on certain petroleum products.⁵⁶ It has been introduced in each legislative session since 2016-2017.⁵⁷ The bill proposes that subsection (b)(1) of N.J.S. 54:15B-2.1 be deleted by amendment.⁵⁸

Conclusion

The proposed revisions contained in the Appendix are intended to make both N.J.S. 54:39-112(a)(1) and N.J.S. 54:15B-2.1(b)(1) easier to read and to clarify that the term “autobus” in Title 48 does not apply to the motor fuel tax exemption and Title 54.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 406.

⁵⁵ *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).

⁵⁶ S.B. 1826, 2022 Leg., 220th Sess. (N.J. 2022) (introduced and referred to the Senate Budget and Appropriations Committee on Feb. 28, 2022).

⁵⁷ S.B. 2717, 2016 Leg., 217th Sess. (N.J. 2016) (introduced and referred to the Senate Budget and Appropriations Committee on Nov. 03, 2016); S.B. 1438, 2018 Leg., 218th Sess. (N.J. 2018) (introduced and referred to the Senate Budget and Appropriations Committee on Feb. 01, 2018); S.B. 1401, 2020 Leg., 219th Sess. (N.J. 2020) (introduced and referred to the Senate Budget and Appropriations Committee on Feb. 13, 2020).

⁵⁸ *Id.*

Appendix

The relevant text of N.J.S. 54:39-112(a)(1) and N.J.S. 54:15B-2.1(b)(1), including proposed modifications (proposed additions are shown with underline, and proposed deletions with ~~strikethrough~~), follows:

N.J.S. 54:39-112. Exemptions and claims for a refund by certain enumerated fuel uses; recovery by consumers, suppliers and distributors

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

(1) Autobuses

(A) 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~~

(B) ~~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~~;

(C) while providing bus service under a contract with:

(i) the New Jersey Transit Corporation; or

(ii) ~~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~~; or

(D) ~~autobuses~~ providing commuter bus service which receive or discharge passengers in New Jersey.

For the purpose of this ~~paragraph~~ subsection:

~~“commuter~~ 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~~ Regular route service” does not mean a regular route in the nature of special bus operation or a casino bus operation.;

* * *

Comments

The first sentence of the current version of N.J.S. 54:39-112(a)(1) is 112 words long and contains ten conjunctions. The syntax of this sentence led the court in *Senior Citizens United Community Services, Inc. v. Director, Division of Taxation*, to state 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.”⁵⁹

Consistent with contemporary legislative drafting practices, the proposed language divides the statute into subsections to improve accessibility. The proposed modifications divide the block paragraph into four sections, (A)-(D). Each subsection sets contains one of the four “autobus” exemptions – (A) the “jitney” exemption; (B) the “regular route” exemption; (C) the “special or rural transportation” exemption; and (D) the “commuter” bus exemption. The use of subsections eliminates the ambiguity concerning the nature of the exemption and eliminates the possibility that the Title 48 definition of autobus should be applied to the “special or rural transportation” exemption set forth in subsection (C).

The second sentence of the current version of subsection (a)(1) is 84 words long and contains two definitions. The definitions of “commuter bus service” and “regular route service” appear at the end of the substantive language of the statutory subsection. These nested definitions are not easily accessible. The proposed statutory modification separates the definition from the substance of the statute and from one another. For convenience and clarity, these definitions immediately follow the list of exemptions.

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

* * *

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

(A) 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~~

(B) ~~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~~;

(C) while providing bus service under a contract with:

(i) the New Jersey Transit Corporation; or

(ii) ~~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~~; or

⁵⁹32 N.J. Tax 381 (2021).

(D) ~~autobuses~~ providing commuter bus service which receive or discharge passengers in New Jersey.

For the purpose of this ~~paragraph~~ subsection:

~~“commuter~~ 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~~ Regular route service” does not mean a regular route in the nature of special bus operation or a casino bus operation;~~;~~

* * * *

Comments

The statutory language in the Petroleum Products Gross Receipts Tax identical to the language contained in the Motor Fuel Tax exemption – N.J.S. 54:39-112(a)(1). The first sentence of the current version of N.J.S. 54:15B-2.1(b)(1) is 112 words long and contains ten conjunctions. The syntax of this sentence led the court in *Senior Citizens United Community Services, Inc. v. Director, Division of Taxation*, to state 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.”⁶⁰

Consistent with contemporary legislative drafting practices, the proposed language divides the statute into subsections to improve accessibility. The proposed modifications divide the block paragraph into four sections, (A)-(D). Each subsection sets contains one of the four “autobus” exemptions – (A) the “jitney” exemption; (B) the “regular route” exemption; (C) the “special or rural transportation” exemption; and (D) the “commuter” bus exemption. The use of subsections eliminates the ambiguity concerning the nature of the exemption and eliminates the possibility that the Title 48 definition of autobus should be applied to the “special or rural transportation” exemption set forth in subsection (C).

The second sentence of the current version of subsection (b)(1) is 84 words long and contains two definitions. The definitions of “commuter bus service” and “regular route service” appear at the end of the substantive language of the statutory subsection. These nested definitions are not easily accessible. The proposed statutory modification both separates the definition from the substance of the statute and from one another. For convenience and clarity, these definitions immediately follow the list of exemptions.

⁶⁰32 N.J. Tax 381 (2021).