

Act No. 584  
Public Acts of 1996  
Approved by the Governor  
January 16, 1997  
Filed with the Secretary of State  
January 17, 1997

**STATE OF MICHIGAN  
88TH LEGISLATURE  
REGULAR SESSION OF 1996**

Introduced by Senator Honigman

# **ENROLLED SENATE BILL No. 746**

AN ACT to amend sections 1, 2, 4, 5, 6, 8, 17, and 21 of Act No. 119 of the Public Acts of 1980, entitled "An act to prescribe a privilege tax for the use of public roads and highways of this state by motor carriers by imposing a specific tax upon the use of motor fuel within this state; to provide for certain credits against this tax and certain mechanisms for paying, collecting, and enforcing this tax; to provide for the licensing of motor carriers and for exemptions from licensure; to require the keeping and providing for the examination of certain reports; to provide review procedures for the assessment of the tax and revocation of a license; to impose certain duties upon and confer certain powers to certain state departments and agencies; to prescribe certain penalties for the violation of this act; and to make appropriations," section 1 as amended by Act No. 186 of the Public Acts of 1988 and section 5 as amended by Act No. 235 of the Public Acts of 1987, being sections 207.211, 207.212, 207.214, 207.215, 207.216, 207.218, 207.227, and 207.231 of the Michigan Compiled Laws; to add section 6a; and to repeal acts and parts of acts.

*The People of the State of Michigan enact:*

Section 1. Sections 1, 2, 4, 5, 6, 8, 17, and 21 of Act No. 119 of the Public Acts of 1980, section 1 as amended by Act No. 186 of the Public Acts of 1988 and section 5 as amended by Act No. 235 of the Public Acts of 1987, being sections 207.211, 207.212, 207.214, 207.215, 207.216, 207.218, 207.227, and 207.231 of the Michigan Compiled Laws, are amended and section 6a is added to read as follows:

Sec. 1. As used in this act:

- (a) "Axle" means any 2 or more load-carrying wheels mounted in a single transverse vertical plane.
- (b) "Commissioner" means the state commissioner of revenue.
- (c) "Department" means the revenue division of the department of treasury.
- (d) "Motor carrier" means a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state.
- (e) "Motor fuel" means diesel motor fuel as defined by Act No. 150 of the Public Acts of 1927, being sections 207.101 to 207.202 of the Michigan Compiled Laws.
- (f) "Nonprofit private, parochial, denominational, or public school, college, or university" means an elementary, secondary, or postsecondary educational facility.
- (g) "Person" means a natural person, partnership, firm, association, joint stock company, limited liability company, limited liability partnership, syndicate, or corporation, and any receiver, trustee, conservator, or officer, other than a unit of government, having jurisdiction and control of property by virtue of law or by appointment of a court.
- (h) "Public roads or highways" means a road, street, or place maintained by this state or a political subdivision of this state and generally open to use by the public as a matter of right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel restricted for the purpose of construction, maintenance, repair, or reconstruction.
- (i) "Qualified commercial motor vehicle" means a motor vehicle used, designed, or maintained for transportation of persons or property and 1 of the following:
  - (i) Having 3 or more axles regardless of weight.

(ii) Having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 12,000 kilograms.

(iii) Is used in a combination of vehicles, if the weight of that combination exceeds 26,000 pounds or 12,000 kilograms gross vehicle or registered gross vehicle weight.

(j) "Qualified commercial motor vehicle" shall not include a recreational vehicle or a road tractor, truck, or truck tractor owned by a farmer and used in connection with the farmer's farming operation and not used for hire or a school bus, a bus defined and certificated under the motor bus transportation act, Act No. 432 of the Public Acts of 1982, being sections 474.101 to 474.141 of the Michigan Compiled Laws, or a bus operated by a public transit agency operating under any of the following:

(i) A county, city, township, or village as provided by law, or other authority incorporated under Act No. 55 of the Public Acts of 1963, being sections 124.351 to 124.359 of the Michigan Compiled Laws. Each authority and governmental agency incorporated under Act No. 55 of the Public Acts of 1963 has the exclusive jurisdiction to determine its own contemplated routes, hours of service, estimated transit vehicle miles, costs of public transportation services, and projected capital improvements or projects within its service area.

(ii) An authority incorporated under the metropolitan transportation authorities act of 1967, Act No. 204 of the Public Acts of 1967, being sections 124.401 to 124.426 of the Michigan Compiled Laws, or that operates a transportation service pursuant to an interlocal agreement under the urban cooperation act of 1967, Act No. 7 of the Public Acts of the Extra Session of 1967, being sections 124.501 to 124.512 of the Michigan Compiled Laws.

(iii) A contract entered into pursuant to Act No. 8 of the Public Acts of the Extra Session of 1967, being sections 124.531 to 124.536 of the Michigan Compiled Laws, or Act No. 35 of the Public Acts of 1951, being sections 124.1 to 124.13 of the Michigan Compiled Laws.

(iv) An authority incorporated under the public transportation authority act, Act No. 196 of the Public Acts of 1986, being sections 124.451 to 124.479 of the Michigan Compiled Laws, or a nonprofit corporation organized under the nonprofit corporation act, Act No. 162 of the Public Acts of 1982, being sections 450.2101 to 450.3192 of the Michigan Compiled Laws, that provides transportation services.

(v) An authority financing public improvements to transportation systems under the revenue bond act of 1933, Act No. 94 of the Public Acts of 1933, being sections 141.101 to 141.140 of the Michigan Compiled Laws.

(k) Qualified commercial motor vehicle includes a vehicle operated on a public road or highway owned by a farmer and used in connection with the farmer's farming operation if the vehicle bears out of state registration plates of a state that does not give similar treatment to vehicles from this state.

Sec. 2. (1) A motor carrier licensed under this act shall pay a road tax calculated on the amount of motor fuel consumed in qualified commercial motor vehicles on the public roads or highways within this state. The tax shall be at the rate of 21 cents per gallon on motor fuel consumed on the public roads or highways within this state. In addition, qualified commercial motor vehicles licensed under this act that travel in interstate commerce will be subject to the definition of taxable motor fuels and rates as defined by the respective international fuel tax agreement member jurisdictions. A return shall be filed, and the tax due paid, quarterly to the department on or before the last day of January, April, July, and October of each year on a form prescribed and furnished by the department. Each quarterly return and tax payment shall cover the liability for the annual quarter ending on the last day of the preceding month.

(2) The amount of motor fuel consumed in the operation of a motor carrier on public roads or highways within this state shall be determined by dividing the miles traveled within Michigan by the average miles per gallon of motor fuel. The average miles per gallon of motor fuel shall be determined by dividing the miles traveled within and outside of Michigan by the total amount of motor fuel consumed within and outside of Michigan.

(3) In the absence of records showing the average number of miles operated per gallon of motor fuel, it shall be presumed that 1 gallon of motor fuel is consumed for every 4 miles traveled.

(4) The quarterly tax return shall be accompanied by a remittance covering any tax due.

(5) The commissioner, when he or she considers it necessary to ensure payment of the tax or to provide a more efficient administration of the tax, may require the filing of returns and payment of the tax for other than quarterly periods.

Sec. 4. (1) A person filing a return pursuant to section 2 who purchased motor fuel in this state upon which a tax was imposed and not refunded pursuant to Act No. 150 of the Public Acts of 1927, being sections 207.101 to 207.202 of the Michigan Compiled Laws, shall be entitled to a credit against the tax imposed by this act equal to the tax paid when purchasing the motor fuel pursuant to Act No. 150 of the Public Acts of 1927. The excess of a credit allowed by this subsection over tax liabilities imposed by this act shall be refunded to the taxpayer.

(2) In order to secure credit under subsection (1) for motor fuel purchased in this state the motor carrier shall secure a receipt showing the seller's name, the number of gallons of motor fuel, the type of motor fuel, the address of the seller, the license number or unit number of the commercial motor vehicle, and the date of sale.

(3) A motor carrier may credit against the tax imposed by this act on each quarterly return filed under this subsection an amount equal to 6 cents per gallon of the sales tax paid on diesel fuel purchased in this state during the preceding calendar quarter.

(4) A refund, when approved by the department, shall be payable from the revenue received under this act.

(5) A person, or an agent, employee, or representative of the person, who makes a false statement in any return under this act or who submits or provides an invoice or invoices in support thereof upon which alterations or changes exist in the date, name of seller or purchaser, number of gallons, identity of the qualified commercial motor vehicle into which fuel was delivered or the amount of tax that was paid, or who knowingly presents any return or invoice containing a false statement, or who collects or causes to be paid a refund without being entitled thereto, forfeits the full amount of the claim and is guilty of a misdemeanor, punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

Sec. 5. (1) A person required to be licensed by this act shall not act as a motor carrier in this state unless the person is the holder of an unrevoked license issued by the department or is the holder of an unrevoked license issued under the international fuel tax agreement by this state or another member jurisdiction of the international fuel tax agreement. To procure a license, a motor carrier shall file with the department a verified application upon a form prescribed and to be furnished by the department. The application shall contain the name and address of the motor carrier and, if a partnership, limited liability company, or corporation, the names and addresses of the persons constituting the firm, partnership, association, joint stock company, limited liability company, syndicate, or corporation, the name of its resident agent, the location of its predominant place of business, both within and outside of this state, and other pertinent information the department may require.

(2) The department shall issue to each motor carrier 1 license per person and 2 decals for each qualified commercial motor vehicle. A decal shall be affixed respectively to the right-hand side and left-hand side of the cab of every qualified commercial motor vehicle while it is being operated in this state by each person licensed under this act. A copy of the license shall be carried in each cab while it is being operated.

(3) For cause, a motor carrier may be required to file with the department a surety bond payable to the state, upon which the applicant is the obligor, in the sum of 3 times the highest estimated quarterly tax, or \$1,000.00, whichever is greater. This surety bond shall be conditioned upon the applicant complying with this act and with the rules promulgated pursuant to this act, promptly filing true reports, and paying the taxes, interest, and penalties required by this act. Each surety bond shall be approved as to amount and sureties by the department. The department may accept cash or securities instead of a surety bond.

(4) The commissioner may waive the bond requirement for a motor carrier exempt from the reporting requirements of section 2 when the collection of taxes would not be impaired by lack of security of a bond required by this section.

(5) The license and decals shall not be assignable or transferable to another person and shall be valid only for the person in whose name they are issued. However, upon application to the department, a motor carrier, upon the sale, conveyance, disposal, or replacement of a qualified commercial motor vehicle, may transfer the license and decals for that qualified commercial motor vehicle to another qualified commercial motor vehicle of the motor carrier which is required to be licensed under this act. The department shall issue replacement decals for the newly licensed qualified commercial motor vehicle that authorizes the holder of the qualified commercial motor vehicle license to use and consume motor fuel in the qualified commercial motor vehicle upon the public roads or highways of this state until the original license would have expired. The department may require the payment of a fee to cover the administrative costs of issuing a replacement license or decals.

(6) Upon filing of the application and upon posting of any bond as required, the department shall issue to the applicant a license and decals that authorize the holder to operate qualified commercial motor vehicles using and consuming motor fuels upon the public roads or highways of this state until January 1 of the year following the date of issuance.

(7) If a licensee ceases to engage in business within this state, the licensee shall notify the department in writing within 15 days after discontinuance.

Sec. 6. (1) If the holder of the motor carrier license at any time refuses or neglects to file the required quarterly report, and pay the full amount of tax at the time and in the manner and place the quarterly report is required to be filed, the department may revoke, after a conference held with the department, a license issued pursuant to section 5, and shall promptly notify the holder of the license of the revocation by notice sent by registered mail to the last known address of the holder. If the quarterly report is filed and the tax is paid within 7 days after their due date and it is established that the delay was due to accident or reasonable cause, the department may continue the license.

(2) The department may refuse to issue a license if the application meets 1 or more of the following conditions:

(a) Is filed by a person whose license at any time has been revoked by the department.

(b) Contains a misrepresentation, misstatement, or omission of information required by the application.

(c) Is filed by another person as a subterfuge for the real person in interest whose license has been revoked for cause by the department.

(d) Is filed by a person who is delinquent in the payment of a fee, tax, penalty, or other amount due the department.

(3) A person whose license has been revoked or a person who has been refused a license may appeal the decision of the department under the procedures prescribed in Act No. 122 of the Public Acts of 1941, being sections 205.1 to 205.31 of the Michigan Compiled Laws.

Sec. 6a. (1) The tax imposed by this act shall be administered pursuant to Act No. 122 of the Public Acts of 1941. In case of conflict between Act No. 122 of the Public Acts of 1941 and this act, this act shall prevail.

(2) Tax due other member jurisdictions of the international fuel tax agreement incurred by persons while operating on a current, suspended, or revoked license issued by the department under the international fuel tax agreement shall be considered tax imposed by this act and a tax debt due this state.

Sec. 8. (1) Every qualified commercial motor vehicle leased to a motor carrier shall be subject to this act, to the same extent and in the same manner as qualified commercial motor vehicles owned by a motor carrier.

(2) A lessor of qualified commercial motor vehicles may be considered a motor carrier with respect to qualified commercial motor vehicles leased to others, if the lessor supplies or pays for the motor fuel consumed by the vehicles or bills rental or other charges calculated to include the cost of motor fuel. A lessee motor carrier may exclude a qualified commercial motor vehicle leased from others from the reports and liabilities required by this act if that qualified commercial motor vehicle has been leased from a lessor who is a motor carrier pursuant to this act and the lease agreement provides for the lessor to pay the cost of motor fuel and motor fuel taxes.

(3) Upon application by the licensed motor carrier, the department may authorize a licensed motor carrier leasing qualified commercial motor vehicles from 2 or more lessors to file consolidated reports for these lessors.

(4) This section shall govern the primary liability under this act of lessors and lessees of qualified commercial motor vehicles. If a lessor or lessee primarily liable fails, in whole or in part, to discharge his or her liability, the failing party and the other lessor or lessee party to the transaction shall be jointly and severally responsible and liable for compliance with this act and for the payment of tax due. However, the aggregate of taxes collected from a lessor and lessee by this state under this act shall not exceed the total amount of taxes due and costs and penalties imposed.

Sec. 17. When a person is discovered in this state operating a qualified commercial motor vehicle in violation of this act, another person shall not thereafter operate this vehicle on the public roads or highways of this state, except to remove it from the public road or highway for purpose of parking or storing the vehicle, until a license or a trip permit is obtained pursuant to this act.

Sec. 21. The commissioner or the commissioner's designated representative shall enforce the requirements of this act. In addition, the department of state police shall assist the department in the enforcement of the requirements of this act.

Section 2. Sections 11, 12, 13, 14, 16, 18, 19, 23, and 25 of Act No. 119 of the Public Acts of 1980, being sections 207.221, 207.222, 207.223, 207.224, 207.226, 207.228, 207.229, 207.233, and 207.235 of the Michigan Compiled Laws, are repealed.

Section 3. This amendatory act shall take effect January 1, 1997.

This act did not receive immediate effect and will take effect 90 days after final adjournment of the Legislature.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved -----

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Governor.