

# TAX-EXEMPT LIQUID FUELS

A SURVEY OF THE EXPERIENCE UNDER THE ACT  
OF 1949, MAY 26, P. L. 1880, WHICH PROVIDES  
FOR A PARTIAL REFUND OF TAX PAID ON LIQUID  
FUEL USED FOR NONHIGHWAY AGRICULTURAL PURPOSES



A Report

of the

JOINT STATE GOVERNMENT COMMISSION

to the

GENERAL ASSEMBLY

of the

COMMONWEALTH OF PENNSYLVANIA

SESSION OF 1951

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as amended 1939, June 26, P. L. 1084; 1943, March 8, P. L. 13, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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## LETTER OF TRANSMITTAL

*To the Members of the General Assembly of the Commonwealth of Pennsylvania:*

House Concurrent Resolution No. 74 of the 1949 Session of the General Assembly directed the Joint State Government Commission to study and investigate taxation and exemption of liquid fuels utilized for nonhighway purposes, methods of exempting, taxing and rebating, and distributing any such taxes. The findings of the Commission are submitted herewith.

To aid in the study of tax-exempt liquid fuels, the Commission appointed a subcommittee in accordance with Act of 1943, March 8, P. L. 13, Section 1. The cooperation of the members of the subcommittee is gratefully acknowledged.

BAKER ROYER, *Chairman.*

*Joint State Government Commission  
Capitol Building  
Harrisburg, Pennsylvania*



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## SUMMARY OF FINDINGS

I. Pennsylvania has levied a tax on liquid fuels since 1921. At the present time the tax rate is \$.05 per gallon, of which \$.03 is levied on a permanent basis and \$.02 under authorization which expires May 31, 1951.

II. In Pennsylvania, the proceeds from the liquid fuels tax and other highway-user imposts are shared by the Commonwealth, the counties, cities, boroughs, first class townships and second class townships.

III. In 1948 and 1949, allocations to the above named subdivisions were as follows:

	1948	1949
Paid to Counties from Liquid Fuels		
Tax Fund .....	\$9,007,482.74	\$9,540,112.37
Paid to boroughs, cities, and first class townships from Motor License Fund .....	4,430,316.38	4,996,155.84
Paid to second class townships from Motor License Fund .....	4,443,982.47	4,997,788.37

IV. Unlike numerous other states, Pennsylvania, prior to 1949, taxed all liquid fuel sold at retail and permitted no refunds of taxes paid on fuel used for nonhighway purposes. Other states, as a matter of traditional practice, have refunded part or all of the tax paid on liquid fuel not used

for highway purposes. The major types of nonhighway use for which liquid fuels taxes are often refunded are:

Agriculture  
Aviation  
Cleaning and dyeing  
Construction  
Industry  
Railroading and navigation

In connection with aviation, the most recent activity which has laid claim to refunding, it may be noted that, while Pennsylvania collects the full tax on motor fuel used for aviation purposes, the proceeds of the tax realized from the sale of motor fuel for aircraft are used to improve airport facilities.

V. The General Assembly of 1949 (1949, May 26, P. L. 1880) made provision for the refunding of one-half of the amount of liquid fuels taxes paid on fuels used for non-highway agricultural purposes and for the payment of a quarterly filing fee of \$1.50, such filing fee to be deducted from the claim. The quarterly filing fee of \$1.50, in effect, makes it impossible for a farm operator to get a refund on the first sixty gallons of liquid fuels used in any one quarter for nonhighway agricultural purposes.

VI. During the first year of operation (July 1, 1949, to June 30, 1950), \$219,034.08 was paid in refunds to 7,617 recipients, an average of \$28.76 per recipient.

VII. The average acreage (including both cultivated and uncultivated land) of the farms of refund recipients was 219 acres, while the average acreage of all farms in Pennsylvania was about 87½ acres.

VIII. Recipients whose farms were smaller than 20 acres in almost all cases received less than \$40 during the year, while most recipients whose farms exceeded 500 acres received over \$100 during the year.

IX. The number of claims filed and the dollar amounts refunded for the period July 1, 1949, to June 30, 1950, are shown below:

<i>Quarter</i>	<i>Number of Claims</i>	<i>Dollars Refunded</i>
Third Quarter, 1949 .....	5,287	\$78,324.70
Fourth Quarter, 1949 .....	3,413	31,642.68
First Quarter, 1950 .....	2,863	19,431.43
Second Quarter, 1950 .....	5,625	89,635.27
Total .....	17,188	\$219,034.08

X. The farm operators filing claims, by quarters, as percentages of the total number of farm operators in Pennsylvania, were as follows:

Third Quarter, 1949 .....	2.9%
Fourth Quarter, 1949 .....	1.8%
First Quarter, 1950 .....	1.4%
Second Quarter, 1950 .....	2.8%



## Section I

### THE LIQUID FUELS TAX

#### *A. History and Characteristics of Liquid Fuels Taxes*

The first liquid fuels tax was levied by the state of Oregon in the year 1919. Pennsylvania introduced the tax in 1921. By 1929, all forty-eight states and the District of Columbia used this levy to help finance the rapidly expanding network of through ways, access roads and streets.

Although popularly referred to as a "tax," the levy on liquid fuels closely resembles the so-called "special assessment" or "betterment levy," which for generations has been used in many states to finance street and road improvements beneficial to abutting property owners.

As conceived by many legislative bodies, the liquid fuels tax is a price levy imposed upon the highway user with a view of compelling him to pay, at least in part, for the road facilities which he utilizes. If this view is strictly adhered to, it follows that liquid fuel not used for highway purposes should not be subject to the tax.

Relief from the tax can be accomplished by: (1) Exemption of fuel purchased for nonhighway purposes, and (2), refunding of the tax paid on fuel which is not used for highway purposes. A survey of selected states shows that the refunding method is used more extensively than the exemption method.

However, both methods present enforcement problems. These problems seem to be largely overcome by employment of a third arrangement under which the tax is collected in

full from all purchasers of liquid fuel, but some portion or all of the tax collected from purchasers who make little or no use of highways is devoted to the financing of special facilities for these purchasers. Pennsylvania uses this arrangement in connection with aircraft operators. These operators pay the full tax, but the proceeds are used to develop airport facilities.

### **B. *The Liquid Fuels Tax in Pennsylvania: Rates and Yields, Disposition of Proceeds, Refunding***

1. *Rates and Yields*—Currently, the liquid fuels tax is levied at the rate of \$.05 per gallon, of which \$.03 is levied on a permanent basis and \$.02 under authorization which expires May 31, 1951.<sup>1</sup> Diesel fuel is treated under a separate statute, which specifically provides that only diesel fuel used for highway purposes is subject to the levy.<sup>2</sup>

The yield of the liquid fuels tax, exclusive of tax collected on diesel fuel, is shown below for recent years.

<i>Fiscal Year Ended</i>	<i>Total Receipts from Liquid Fuels Tax</i>
1946 .....	\$48,863,794.58
1947 .....	69,806,865.55
1948 .....	70,170,739.03
1949 .....	78,102,266.18
1950 .....	89,303,381.37

The yield of one half cent of the tax is paid into the Liquid Fuels Tax Fund for distribution among the counties;

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<sup>1</sup> 1931, May 21, P. L. 149, as amended 1935, June 21, P. L. 412 and 1949, March 24, P. L. 315.

<sup>2</sup> 1947, July 2, P. L. 1199.



the remainder is deposited in the Motor License Fund, into which proceeds from motor license and related fees are also paid.

2. *Disposition of Proceeds*—The disposition of the proceeds from the liquid fuels tax is restricted by Article IX, Section 18, of the Pennsylvania Constitution, which provides in part:

“All proceeds from gasoline and other motor fuel excise taxes, motor vehicle registration fees and license taxes, operators’ license fees and other excise taxes imposed on products used in motor transportation after providing therefrom for (a) cost of administration and collection, (b) payment of obligations incurred in the construction and reconstruction of public highways and bridges shall be appropriated by the General Assembly to agencies of the State or political subdivisions thereof; and used solely for construction, reconstruction, maintenance and repair of and safety on public highways and bridges and air navigation facilities and costs and expenses incident thereto. . . .”

In accordance with the constitutional mandate, the proceeds from the liquid fuels tax are reserved for highway purposes. On the state level, the Department of Highways, the Department of Revenue, the State Treasurer, Pennsylvania State Police and the Department of Public Instruction perform some highway-related functions and are allocated monies from the liquid fuels tax proceeds. On the local level, counties, cities, boroughs, first class townships, and second class townships share in the proceeds of the levy.

The allocations to political subdivisions for the period 1946 to 1949, inclusive, are as follows:

<i>Fiscal Year Ended</i>	<i>Paid to Counties</i>	<i>Paid to Boroughs, Cities, Towns and First Class Townships</i>	
		<i>Townships</i>	<i>Paid to Second Class Townships</i>
1946 . . . . .	\$5,870,492.12	\$1,061,378.41	\$3,676,804.59
1947 . . . . .	7,235,308.87	4,222,142.70	4,254,029.64
1948 . . . . .	9,007,482.74	4,430,316.38	4,443,982.47
1949 . . . . .	9,540,112.37	4,996,155.84	4,997,788.37

3. *Refunding*—Until the passage of the 1949 legislation, Pennsylvania statutes did not provide for the exemption or refunding of tax paid on fuels used for nonhighway purposes. In 1949, the General Assembly passed and the Governor approved legislation (1949, May 26, P. L. 1880) which provided for the refunding of one-half the amount of tax paid on liquid fuels used for nonhighway agricultural purposes.<sup>3</sup>

The statute further provides that claims for refunds must be filed quarterly, and that for each quarterly claim a filing fee of \$1.50 is to be charged, such fee to be deducted from the claim. It should be noted that the payment of the required \$1.50 filing fee, in effect, makes it impossible for a farm operator to get a refund on the first sixty gallons of liquid fuel used in any one quarter for nonhighway agricultural purposes. ( $\$1.50 \div \$0.025$  refund per gallon = 60 gallons.)

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<sup>3</sup> For formal opinion of the Attorney General concerning the definition of "nonhighway agricultural purposes," see Appendix A.

Total refunds paid under the 1949 legislation for each of the four quarters of the period beginning July 1, 1949, and ending June 30, 1950, are shown below:

<i>Quarter</i>	<i>Number of Claims</i>	<i>Dollars Refunded</i>
Third Quarter, 1949 .....	5,287	\$78,324.70
Fourth Quarter, 1949 .....	3,413	31,642.68
First Quarter, 1950 .....	2,863	19,431.43
Second Quarter, 1950 .....	5,625	89,635.27
Total .....	17,188	\$219,034.08

### C. Refunding and Exemption Procedures in Selected States

Refunding procedures in the following twenty states have been examined:

California	New Jersey
Connecticut	New York
Delaware	North Carolina
Illinois	North Dakota
Indiana	Ohio
Kansas	Oklahoma
Maryland	Tennessee
Massachusetts	Virginia
Michigan	West Virginia
Missouri	Wisconsin

The states listed above have been selected for comparison because they either have had extensive experience with re-

private and commercial nonhighway consumption of liquid fuels in Pennsylvania amounted to 4% of total consumption.

On the assumption that the estimates of the Public Roads Administration are substantially correct, a full refund on all fuel used for all nonhighway purposes, if in effect in Pennsylvania in 1949, would have reduced liquid fuel tax receipts by at least three million dollars.<sup>5</sup>

As has been previously observed, the statute provides that claims for refunds must be filed quarterly. In view of this requirement, it is desirable to analyze the effects of the refund provisions upon differently circumstanced farmers and different farm regions on both an annual and a quarterly basis.

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<sup>5</sup> For table showing private and commercial nonhighway use of liquid fuels and total consumption of liquid fuels in selected states, see Appendix B.

## Section II

### PENNSYLVANIA LIQUID FUELS TAX REFUNDS ANALYZED ON AN ANNUAL BASIS

In this section, data relating to the number of refunds, classified by size of refund and the amounts of refund, related to both size of farm and number of acres under cultivation, is presented and analyzed.<sup>6</sup> The data presented are on an annual basis for the period July 1, 1949, to June 30, 1950.

Table I shows, on an annual basis, the number of refund recipients and the percentages of refund recipients, classified by the size of refunds, and the percentages of the total dollar refund amount attributable to each refund size-group.

Table I shows that the 7,617 refund recipients received payments averaging \$28.76 during the year. The recipients receiving less than \$19.77 (one-half of the total number of recipients) operated 50.62% of the farms for which refunds were made and received 18.65% of the total amount refunded.

The farms of the 7,617 recipients to whom refunds were made during the year ended June 30, 1950, constituted 4.4 per cent of the total of 171,761 farms in Pennsylvania.

Of the 7,617 recipients, 7,264 reported the total acreage of their farms. As reported in the United States Census

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<sup>6</sup> For details of form of business organization, type of ownership or rental of farm, size of farm and number of quarters in which refund claims were filed, see Appendix C.

of Agriculture, 1945, the average size of all farms in Pennsylvania was 87.5 acres, but the average size of farms reported in connection with liquid fuels tax refunds was 219 acres. In Pennsylvania, one half of the farms exceed 70 acres in size, while one half of the farms whose acreage was reported in connection with liquid fuels tax refunds exceeded 163 acres.

**Table I**

**Distribution of the Number of Refund Recipients, the Percentages of All Refund Recipients, and the Percentage of Total Dollar Amount of Refunds Classified by Size of Annual Refund in Dollars\***

<i>Size of Annual Refund in Dollars</i>	<i>Number of Recipients</i>	<i>Percentage of All Recipients</i>	<i>Percentage of Total Dollar Amount of Refunds</i>
(1)	(2)	(3)	(4)
Under \$10.00 .....	1,782	23.39%	4.65%
\$10 but less than \$20 .....	2,074	27.23	14.00
\$20 but less than \$30 .....	1,373	18.03	15.45
\$30 but less than \$40 .....	908	11.92	14.30
\$40 but less than \$50 .....	506	6.64	10.25
\$50 but less than \$60 .....	302	3.96	7.47
\$60 but less than \$70 .....	202	2.65	5.91
\$70 but less than \$80 .....	115	1.51	3.88
\$80 but less than \$90 .....	95	1.25	3.63
\$90 but less than \$100 ....	60	.79	2.56
\$100 and over .....	200	2.63	17.90
Total .....	7,617	100.00%	100.00%

\* SOURCE: See Appendix C, Reference Table 1.

The percentage distribution of farms from which claims were filed to total number of farms in given size classes as shown by the United States Census of Agriculture, 1945, is presented in Table II.

**Table II**  
**Percentage Distribution of Farms from Which Refund Claims Were Filed to Total Number of Farms in Given Size Classes**

<i>Size of Farm in Acres</i>	<i>Number of Farms of Recipients Reporting Acres<sup>1</sup></i>	<i>Census Number of Farms</i>	<i>Percentage: Column (2) ÷ Column (3)</i>
(1)	(2)	(3)	(4)
1 but less than 10 . . . . .	5	21,729	.02%
10 but less than 30 . . . . .	40	25,447	.16
30 but less than 50 . . . . .	136	18,079	.75
50 but less than 70 . . . . .	326	20,746	1.57
70 but less than 100 . . . . .	783	25,565	3.06
100 but less than 140 . . . . .	1,654	28,535	5.80
140 but less than 180 . . . . .	1,209	13,895	8.70
180 but less than 220 . . . . .	887	7,485	11.85
220 but less than 260 . . . . .	628	3,791	16.57
260 but less than 500 . . . . .	1,248	5,508	22.66
500 but less than 1,000 . . . . .	280	835	33.53
1,000 and over . . . . .	68	146	46.58
Total . . . . .	7,264	171,761	100.00%

<sup>1</sup> 95.37 per cent of all recipients reported acres of farm. See Appendix C, Reference Table 3.

<sup>2</sup> Total number of farms in Pennsylvania classified according to the United States Census of Agriculture, 1945, Department of Commerce, Bureau of Census.

The size distribution of the farms of refund recipients by number of acres under cultivation is shown in Table III.

**Table III**

**The Distribution of the Number of Farms of Refund Recipients Who Reported Acreage Under Cultivation, the Percentage Distribution of Such Recipients and the Percentage of Total Dollar Refunds Classified by Acreage Under Cultivation \***

<i>Acreage Under Cultivation</i>	<i>Number of Recipients Who Reported Acreage Under Cultivation</i>	<i>Percentage of Farms of Recipients Who Reported Acreage Under Cultivation <sup>1</sup></i>	<i>Percentage of Total Dollar Refunds</i>
(1)	(2)	(3)	(4)
1 but less than 20 . . .	33	45%	.57%
20 but less than 50 . . .	474	6.53	2.48
50 but less than 100 ..	2,453	33.79	19.53
100 but less than 200 ..	3,034	41.79	38.34
200 but less than 500 ..	1,153	15.98	27.90
500 and over . . . . .	114	1.56	11.18
Total . . . . .	7,261	100.00%	100.00%

\* SOURCE: Appendix C, Reference Table 4.

<sup>1</sup> 95.33 per cent of the farms reporting acres under cultivation.

The farms shown in Table III had an average (median) of 115 acres under cultivation. Considering the percentage distribution of number of farms (Column 3) in conjunction with the percentage distribution of the total dollar refunds (Column 4), it appears that the share of the total amount refunded increases as the size of farm increases.

The percentage distributions of the number of farms of refund recipients by dollar amount of annual refunds and by acreage under cultivation are shown in Tables IV-A and IV-B, respectively.



### Section III

## PENNSYLVANIA LIQUID FUELS TAX REFUNDS ANALYZED ON A QUARTERLY BASIS

The present section deals with the following inquiries:

1. Quarter by quarter, what percentage of Pennsylvania farm operators filed claims for refunds?
2. What percentage of total farm acreage did these operators cultivate?
3. Are there any significant variations in the number of claims when that number is related to farm size or number of acres under cultivation?
4. Does refunding exhibit characteristically different patterns in different regions of the Commonwealth?

Table V, below, shows, for the period July 1, 1949 to June 30, 1950, the farms for which claims were filed as a percentage of both the estimated total number of farms and estimated total acreage of farms in Pennsylvania.

Examination of the table shows that the percentage of farms filing claims for refunds ranged from 1.4% for the first quarter of 1950 to 2.9% for the third quarter of 1949. Similarly, the percentage of total acreage operated by the farms filing claims ranged from 3.8% to 7.2%. It may be noted that the farms for which claims were filed represented a greater percentage of total acreage than of total number of farms, which indicates that existing refunding provisions are more profitable to the operators of larger farms.

**Table V**  
**Farms for Which Claims Were Filed as a Percentage of Total Farms and as a Percentage of Total Acreage of Farms in Pennsylvania, July 1, 1949, to June 30, 1950**

<i>Quarter</i>	<i>Farms Reporting Acreage</i>	
	<i>Per Cent of Total Farms in Pennsylvania</i>	<i>Per Cent of Total Acres of Farms in Pennsylvania</i>
(1)	(2)	(3)
Third Quarter, 1949 .....	2.9%	7.2%
Fourth Quarter, 1949 .....	1.8%	4.7%
First Quarter, 1950 .....	1.4%	3.8%
Second Quarter, 1950 .....	2.8%	6.8%

Table VI shows farm size measured in acres, estimated number of farms in given size-groups, the number of farms in each given size-group for which claims were filed, and the number of farms for which claims were filed in each size-group as a percentage of the total number of farms within the group.

Inspection of Table VI shows:

1. The typical Pennsylvania farm has from 100 to 139 acres.
2. Of the 27,864 farm operators having acreages ranging from 100 to 139, 513 filed claims during the first quarter of 1950 and 1,170 during the third quarter of 1949.
3. Expressed as percentages of the total number of farms within this size-group, claims filed, for the two quarters mentioned above, represented 1.8% and 4.2%, respectively, of the farms within the group.

Table VIII, on the following pages, has been prepared to facilitate regional comparisons. The table shows, for each county of the Commonwealth, the number of farms (column 2), the number of claims (columns 3, 5, 7 and 9), and the dollars represented by the claims (columns 4, 6, 8 and 10).

**Table VIII**  
**Number of Claims and Total Dollar Amounts Refunded in Each Pennsylvania County**  
**for Each of the Four Quarters**

<i>County</i>	<i>1945 Ag- ricultural Census</i>	<i>Third Quarter 1949</i>		<i>Fourth Quarter 1949</i>		<i>First Quarter 1950</i>		<i>Second Quarter 1950</i>	
		<i>No. of Farms</i>	<i>No. of Claims</i>	<i>Amount of Dollars</i>	<i>No. of Claims</i>	<i>Amount of Dollars</i>	<i>No. of Claims</i>	<i>Amount of Dollars</i>	<i>No. of Claims</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Adams .....	3,149	150	\$2,317.32	108	\$985.77	81	\$508.38	160	\$2,853.64
Allegheny .....	3,092	38	681.42	19	186.36	24	194.85	41	642.90
Armstrong .....	3,458	87	1,054.19	42	246.55	42	261.06	73	882.70
Beaver .....	2,138	40	630.34	28	264.89	23	131.35	47	627.80
Bedford .....	3,362	157	1,863.40	102	754.56	98	709.00	159	2,208.94
Berks .....	4,863	237	3,649.84	156	1,548.83	120	868.17	224	4,121.38
Blair .....	2,084	60	1,002.01	45	359.93	52	362.93	74	1,229.36
Bradford .....	4,063	83	1,033.03	81	739.42	68	469.52	119	1,710.50
Bucks .....	4,069	238	6,174.01	169	2,402.27	131	1,019.78	268	4,738.92
Butler .....	4,105	133	1,853.70	84	852.06	54	494.79	126	1,702.52
Cambria .....	3,057	75	904.22	41	334.63	33	168.55	63	766.69

Cameron	162	1	3.00	1	4.48	1	3.75	1	29.22
Carbon	773	24	294.08	11	68.48	7	34.17	26	324.20
Center	2,030	85	1,222.10	59	501.79	56	313.42	105	1,469.75
Chester	4,172	300	4,776.95	217	2,267.77	183	1,466.42	310	5,400.35
Clarion	2,280	82	979.03	45	342.26	32	212.13	81	891.54
Clearfield	3,128	25	300.49	13	81.59	6	31.69	26	358.02
Clinton	886	26	352.89	18	116.99	16	107.30	39	587.28
Columbia	2,201	75	1,028.55	48	461.33	41	254.30	90	1,515.70
Crawford	5,335	81	1,161.75	55	462.38	48	300.10	101	1,249.00
Cumberland	2,562	117	1,610.67	77	665.99	69	420.15	136	2,369.74
Dauphin	2,188	50	738.50	26	285.13	25	163.64	47	746.10
Delaware	669	26	355.07	15	150.43	13	100.84	25	434.95
Elk	843	10	134.94	6	56.26	4	27.93	9	172.05
27 Erie	4,600	146	1,850.35	101	842.75	81	510.00	179	2,456.92
Fayette	3,796	81	1,124.15	39	359.82	46	353.22	75	1,030.70
Forest	217	5	84.00	3	30.72	2	10.07	2	29.37
Franklin	3,560	110	1,925.33	90	1,021.22	79	703.42	146	3,245.63
Fulton	1,464	60	655.87	38	289.34	28	173.51	53	644.77
Greene	2,860	8	135.05	4	30.10	2	3.25	8	134.20
Huntingdon	1,765	76	941.61	39	312.45	40	263.37	74	1,113.00
Indiana	3,463	85	1,146.38	42	279.08	41	277.29	78	1,047.87
Jefferson	2,458	43	531.68	26	179.29	18	129.62	45	587.04
Juniata	1,354	61	798.19	40	359.54	35	207.10	55	783.09
Lackawanna	1,385	28	310.53	18	94.75	18	98.22	35	333.26
Lancaster	8,823	190	2,621.15	112	921.96	70	401.86	217	3,348.13
Lawrence	2,446	94	1,456.32	64	492.71	45	224.16	82	1,182.26

Table VIII (Continued)

County	1945 Ag- ricultural Census	Third Quarter 1949		Fourth Quarter 1949		First Quarter 1950		Second Quarter 1950	
	No. of Farms	No. of Claims	Amount of Dollars	No. of Claims	Amount of Dollars	No. of Claims	Amount of Dollars	No. of Claims	Amount of Dollars
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Lebanon .....	1,842	73	812.34	41	346.56	40	262.17	81	1,380.88
28 Lehigh .....	2,317	96	2,243.50	70	1,106.16	44	413.26	112	3,138.92
Luzerne .....	2,567	36	451.36	20	175.01	14	164.36	45	649.42
Lycoming .....	2,942	41	669.36	32	336.83	28	228.97	61	979.20
McKean .....	1,173	8	108.45	3	26.63	3	14.25	6	87.13
Mercer .....	4,353	150	1,626.81	84	586.44	78	426.46	131	1,669.66
Mifflin .....	1,179	63	842.36	38	228.15	25	143.78	53	662.77
Monroe .....	1,219	2	17.95	1	2.70	4	17.62	6	51.45
Montgomery .....	3,294	117	1,554.31	74	759.76	71	428.10	135	2,406.25
Montour .....	783	37	531.32	26	304.41	19	100.26	37	614.76
Northampton .....	2,308	103	3,401.16	68	984.75	58	416.00	99	3,581.48
Northumberland .....	2,118	57	942.64	33	373.31	25	200.64	71	1,271.17
Perry .....	1,788	89	1,279.08	51	534.06	48	311.13	92	1,462.22
Philadelphia .....	125	10	195.28	11	119.41	8	50.98	11	243.44
Pike .....	405	....	.....	1	11.20	2	6.07	2	32.96

Potter .....	1,400	59	857.10	31	267.60	22	129.96	53	850.82
Schuylkill .....	2,184	46	878.39	35	329.33	30	160.65	72	1,266.01
Snyder .....	1,584	69	822.23	36	313.19	26	161.16	77	1,079.90
Somerset .....	3,466	145	1,895.62	107	744.09	92	505.21	155	2,293.33
Sullivan .....	649	7	84.07	3	23.72	3	22.28	8	111.33
Susquehanna .....	2,739	69	736.08	41	307.34	33	210.87	73	829.27
Tioga .....	2,727	85	993.43	67	542.78	41	198.58	106	1,198.96
Union .....	1,006	51	693.51	25	217.47	19	178.16	58	931.21
Venango .....	1,988	41	537.72	22	212.65	21	147.72	40	526.14
Warren .....	1,893	26	302.83	19	151.86	15	81.95	21	227.64
Washington .....	4,910	181	2,134.25	105	711.04	98	661.73	157	2,134.87
Wayne .....	2,439	25	207.60	17	115.01	22	84.62	33	271.24
Westmoreland .....	5,254	196	2,598.96	97	768.36	101	780.56	183	2,512.98
29 Wyoming .....	1,385	35	446.21	24	217.82	27	171.42	49	593.04
York .....	6,864	183	2,758.67	149	1,471.16	114	772.90	199	3,607.33
	<u>171,761</u>	<u>5,287</u>	<u>\$78,324.70</u>	<u>3,413</u>	<u>\$31,642.68</u>	<u>2,863</u>	<u>\$19,431.43</u>	<u>5,625</u>	<u>\$89,635.27</u>





## APPENDICES



## APPENDIX A

### DEPARTMENT OF JUSTICE

Harrisburg, Pa.

January 9, 1950

FORMAL OPINION NO. 602

HONORABLE ELMER G. GRAHAM,  
Secretary,  
Board of Finance and Revenue,  
Harrisburg, Pennsylvania

SIR:

We have your request to be advised concerning the interpretation of the Act of May 26, 1949, P. L. 1880 (hereinafter referred to as Act No. 558), which amends Section 17 of the Liquid Fuels Tax Act of May 21, 1931, P. L. 149, 72 P. S. § 2611q.

Act No. 558 provides in part as follows:

"Any person who shall use or buy liquid fuels on which the tax imposed by this act shall have been paid and shall consume the same in the operation of any non-licensed farm tractor or licensed farm tractor when used off the highways for agricultural purposes *or non-licensed powered farm machinery for purposes relating to the actual production of farm products shall be reimbursed one-half the amount of such tax.*" (Italics supplied.)

Being in the nature of an exemption, these reimbursement provisions must be construed strictly against the person seeking the benefits thereof: Section 58(5) of the Statutory Construction Act of May 28, 1937, P. L. 1019, 46 P. S. § 558.

In order to answer your inquiries, it will be necessary to construe the meaning of the terms "tractor" and "powered farm machinery," since those terms are not defined in the act. The act further qualifies those terms with the words "licensed" or "non-licensed," apparently referring to the registration requirements of self-propelled vehicles contained in the Vehicle Code and the Tractor Code.

"Motor vehicles" are defined in the Vehicle Code as "Every vehicle . . . which is self-propelled, except tractors . . . agricultural machinery. . .": Section 2 of the Act of May 1, 1929, P. L. 905,

as amended, 75 P. S. § 2. "Tractor" is defined in the same section as "Every vehicle of the tractor type, as defined in the Tractor Code." The Vehicle Code contains no definition of agricultural machinery.

Section 401 of the Vehicle Code, 75 P. S. § 91, provides that motor vehicles determined by the Department of Revenue "to be used exclusively . . . upon the farm or farms" owned or operated by the owner of the vehicle are exempt from registration.

Turning to the Tractor Code (Act of May 1, 1929, P. L. 1005) we find in Section 102, as amended by the Act of May 18, 1949, P. L. 1456, 75 P. S. § 862, that a "tractor" is

"Every vehicle of the tractor type which is self-propelled, originally constructed under a distinctive name, make, model or type, by a generally recognized manufacturer, excepting road rollers, ditch diggers, or vehicles used exclusively upon stationary rails or tracks. *In the case of motor vehicles, as defined in the Vehicle Code, which cannot be used as motor vehicles, the secretary may determine in each case whether or not such motor vehicle is of the tractor type, and in making such determination the secretary shall consider the purpose for which such motor vehicle shall be used.*" (Italics supplied.)

"Farm Tractor" is defined by the said 1949 amendment to the Tractor Code as

"Every vehicle of the tractor type which is self-propelled, designed and used primarily as a farm implement for drawing plows, mowing machines and other implements of husbandry."

Section 201 of the Tractor Code, 75 P. S. § 891, exempts from the registration requirement those tractors which are

". . . used exclusively by any person upon the farm or farms he owns or operates, or upon highways, connecting by a direct route, any farms or portions of farms under the ownership or operation of such person, to any other farm or to any garage for the purpose of having the same repaired, . . ."

These provisions of the Vehicle Code and the Tractor Code exempt both motor vehicles and tractors respectively from registration if used exclusively in farming. The registration requirements for motor vehicles and tractors are mutually exclusive.

As noted *supra*, Act No. 558 refers to tractors and powered farm machinery, but contains no express reference to motor vehicles. Since a motor vehicle is not embraced within the term "tractor," it cannot be included within the scope of Act No. 558 unless it is construed to be "powered farm machinery."

According to Section 33 of the Statutory Construction Act, *supra*, 46 P. S. § 533, "Words and phrases shall be construed . . . according to their common and approved usage . . ." Judicial opinions have expressed this same rule in various ways, e.g., "statutes are presumed to employ words in their popular sense"; such words must be given their "common or popular meanings," or be interpreted "as the ordinary man would understand them."

Thus, the terms "powered farm machinery" must be construed in their common and ordinary meanings. "Powered" means equipped with, or capable of operating with, power, presumably power furnished by gasoline motor. "Powered" is broader than "Self-propelled," and would not necessarily require that the gasoline motor be an integral part of the machinery so long as it furnishes the power therefor. The machinery could obtain its power from a stationary or a portable gasoline engine as well as from a self-contained motor.

In *Voorbees v. Patterson*, 20 Kan. 555, 556 (1878), it was held that a McCormick reaper was a "farm utensil"; and a hay-baler and a silo-filler were held to be "farm machinery" in *Lewis v. Insurance Company of North America*, 234 N. W. 499, 500 (Wis. 1931). In *West v. Springfield F. & M. Ins. Co.*, 178 P. 423 (Kan. 1919), it was held that a corn shredding machine operated by a gasoline engine was within the term "gasoline and steam power machinery." The term "farm machinery" is further restricted in the act to such as is used "in the actual production of farm products." In common parlance, this would clearly include reapers, harvesters, hay-balers, corn shredders, silo-fillers, and other machinery of a similar nature.

You first inquire as to whether a non-licensed automobile, truck or jeep used exclusively on a farm for the transportation of fertilizer, crops, etc., may be considered as powered farm machinery. The mere fact that such equipment, if used on a public highway, would be required to be registered under the Vehicle Code does not prevent it from being construed as powered farm machinery.

In our opinion, such a non-licensed motor vehicle can be construed as powered machinery.

Accordingly, you are advised that a non-licensed automobile, truck or jeep used exclusively on a farm for the transportation of fertilizer and crops, etc., is within the reimbursement provisions of Act No. 558.

You next inquire as to whether gasoline consumed by a sprayer mounted on a licensed truck which furnishes power to the sprayer is reimbursable under this section. You state that the owner of such a truck is engaged in the business of spraying trees for various farms.

Under the provisions of the Tractor Code, the Secretary of Revenue must determine whether a motor vehicle "which cannot be used as a motor vehicle" is "of the tractor type." If the secretary concludes that this is a tractor, then it would be within the reimbursement provisions of Act No. 558. On the other hand, if the truck is deemed to be a licensed motor vehicle and not a tractor, the gasoline used therein would not be reimbursable even when used for agricultural purposes.

The act does not require that the person using the gasoline for agricultural purposes be the owner or operator of the farm on which it is used. For that reason, the reimbursement provisions apparently apply to an independent contractor as well as to the farmer.

You further inquire as to whether the tax paid on gasoline consumed in furnishing power for a saw mill and other equipment used in cutting down trees and preparing lumber for market is reimbursable under this amendment. This raises the question of whether lumber is a "farm product."

In *Commonwealth v. Carmalt*, 2 Binn. (Pa.) 235, 238 (1810), in considering the meanings of the word "farm," the Court said:

". . . By a farm we mean an indefinite quantity of land, some of which is cultivated. Most farms contain parcels of land applied to different purposes. Some are used for the cultivation of grass, some of grain, and some remain in wood. It is very common for the proprietors of farms to have a piece of wood land, not contiguous to the place of their residence, but appurtenant to it. (Italics supplied.)

In *Marple Township v. Lynam*, 151, Pa. Superior Ct. 288, 292 (1943), it was held that a nursery where ornamental and other

trees and shrubs were grown was a "farm" within the permitted use of a township zoning ordinance. The Court said:

"The lower court found that 'the popular connotation of a "farm" is a place of several acres where the owner or tenant resides, a substantial portion of which is devoted to the raising of crops, such as wheat, oats, hay, etc., and some vegetables, such as corn and beans, and generally accompanied by the breeding of certain animals such as pigs, cows, chickens, etc., the principal use of the produce being to maintain the farmer and his family and only the excess being sold.' Obviously defendants' contemplated use does not come within that definition and the injunction was granted on that ground.

"We cannot agree that the township, in the ordinance in question used the word 'farm' in that sense. *But even a farm of that class has its woodlot and if, for example, locust trees are propagated and grown for sale as fence posts or evergreens as Christmas trees, it is still a farm.*" (Italics supplied.)

Contra, *Collins v. Mills*, 30 S. E. (2d) 866, 870 (Ga. 1944).

The foregoing authorities in Pennsylvania indicate that the trees cultivated on a farm and sold are farm products.

In *Ammon v. Bowles*, 154 Fed. (2) 698 (C. C. A. 8th, 1946), the Court decided that portable gasoline engines, the principal ultimate use of which was a source of power to operate various mechanical devices on farms, were "farm equipment" within a maximum federal price regulation relating to "mechanical equipment . . . used primarily in connection with the production and farm processing for market and farm use of agricultural products . . ." Thus, a saw used to prepare such trees for sale or use is functioning as farm machinery; and when it is powered by a gasoline engine, it is powered farm machinery engaged in the actual production of farm products within the meaning of Act No. 558.

You next inquire as to whether the tax paid on gasoline consumed in a lighting system for the purpose of lighting barns and other farm buildings as well as the farmer's home may be reimbursed under this section.

The fact that the gasoline motor furnishes mechanical power to a generator, which in turn furnishes electric power for certain farm machinery, would not prevent the application of the reimbursement provisions.

The use of the electricity produced by the lighting system would determine whether the gasoline was used in "powered farm machinery" for "the actual production of farm products." For example, electric power used in operating a milking machine would meet the reimbursement requirements, whereas power furnished to light the home would not meet such requirements.

Accordingly, reimbursements should be permitted for tax paid on gasoline consumed in a lighting system only for the proportion of gasoline corresponding to the ratio between the amount of electric current used in powered farm machinery for the actual production of farm products and the total amount used for all purposes.

You also ask whether a person is entitled to reimbursement of tax paid on liquid fuels consumed by a licensed combine or corn harvester which is self-propelled. You state that some farmers in Pennsylvania own licensed combines and corn harvesters which are self-propelled while others own non-licensed combines and corn harvesters which are drawn by tractors.

A self-propelled combine or corn harvester could be "licensed" only under the provisions of the Tractor Code, *supra*. It would necessarily be a "tractor" within the definition of that code, and the reimbursement provisions of Act No. 558 relative to "licensed tractors" would apply to such licensed combines or corn harvesters, which are self-propelled.

As to a combine and corn harvester drawn by a tractor, the reimbursement provisions of Act No. 558 would apply to the tractor, whether licensed or non-licensed.

Finally, you inquire as to the correct interpretation of the requirement in Act No. 558 that "every claim [for reimbursement] shall be accompanied by receipts indicating that the liquid fuels tax was paid on the liquid fuels for which reimbursements are claimed." A question arises where the farmer purchases the gasoline, together with other equipment and supplies, from a cooperative association or another firm on credit, paying for all purchases periodically or on an installment basis. Thus he would not be able to submit with his claim for reimbursement an individual receipt for the gasoline purchased showing the tax paid by him thereon.

In our opinion, it would be sufficient compliance with the act for the farmer to furnish you with the current delivery slips for his



liquid fuels, showing the amount of Pennsylvania tax payable thereon, because the tax in every instance would have been paid to the Commonwealth by the licensed distributor prior to the time of its purchase by the farmer.

Our conclusions in this opinion may be summarized as follows and you are advised in accordance therewith:

1. A non-licensed motor vehicle used exclusively on a farm in the production of farm products is "powered farm machinery" within the reimbursement provisions of Act No. 558.

2. If the Secretary of Revenue determines that a motor vehicle which cannot be used as a motor vehicle is a tractor, the tax paid on gasoline consumed by it in furnishing power to a sprayer mounted thereon, would be reimbursable.

3. The person seeking reimbursement of liquid fuels tax is not required to be the owner or operator of the farm on which the liquid fuels was used, so long as it was used for requisite agricultural purposes.

4. Tax paid on gasoline consumed in furnishing power for a saw mill is reimbursable when done in connection with the operation of a farm.

5. Tax paid on gasoline consumed in a lighting system may be reimbursed only in proportion to the amount of electric current used in operating powered farm machinery.

6. The tax on all liquid fuels consumed in the operation of licensed or non-licensed combines and harvesters while engaged in the actual production of farm products is reimbursable.

7. The Board of Finance and Revenue has authority to accept current delivery slips of liquid fuels in support of claims for reimbursements, where the purchaser does not pay cash for his liquid fuels when purchased, and cannot furnish receipts indicating that the liquid fuels tax was paid by him.

Very truly yours,

DEPARTMENT OF JUSTICE,

GEORGE W. KEITEL,  
*Deputy Attorney General.*

T. MCKEEN CHIDSEY,  
*Attorney General.*

## APPENDIX B

### The Consumption of Liquid Fuels and the Estimated Private and Commercial Nonhighway Use of Liquid Fuels in Twenty-one Selected States During the Calendar Year 1949 \*

State	Gross Gallonage Consumed <sup>1</sup> (1,000 gals.)	Estimated Private and Commercial Non-Highway Use (1,000 gals.) <sup>2</sup>	Estimated Private and Commercial Non-Highway Use as Per Cent of Gross Gallonage
(1)	(2)	(3)	(4)
California .....	3,242,180	247,999	7.6
Connecticut .....	473,172	20,238	4.3
Delaware .....	91,407	7,203	7.9
Illinois .....	2,164,295	307,343	14.2
Indiana .....	1,117,614	124,644	11.2
Kansas .....	714,274	219,832	30.8
Maryland .....	487,881	31,264	6.4
Massachusetts .....	920,853	39,547	4.3
Michigan .....	1,779,268	214,206	12.0
Missouri .....	1,062,339	94,834	8.9
New Jersey .....	1,186,768	58,735	4.9
New York .....	2,495,462	152,238	6.1
North Carolina .....	844,437	55,880	6.6
North Dakota .....	264,554	123,558	46.7
Ohio .....	2,064,926	139,689	6.8
Oklahoma .....	653,105	126,218	19.3
Pennsylvania .....	2,079,163	82,317	4.0
Tennessee .....	639,675	32,262	5.0
Virginia .....	746,880	45,799	6.1
West Virginia .....	351,296	6,498	1.8
Wisconsin .....	917,706	129,395	14.1

\* SOURCE: <sup>1</sup> Department of Commerce, Bureau of Public Roads, Table G-2, 1949, "Motor-Fuel Consumption—1949."

<sup>2</sup> Department of Commerce, Bureau of Public Roads, Table G-21, 1949, "Analysis of Motor-Fuel Usage in Calendar Year 1949."