

TRANSTRENDS



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### FUEL LINE:



### UNJUST ENRICHMENT THROUGH A WINDFALL AND IT ISN'T A BIG OIL COMPANY

In a rare move, the Translaw Group has sent a letter to the Massachusetts Department of Revenue concerning the ST-10 tax on the cost of the fuel consumed on the Massachusetts Turnpike for which miles were deducted on the IFTA return. The same tax applies on off-road use that many clients file refunds and are faced with the same tax. The original 5% tax represented just about 5% of the value of fuel which was close to the Massachusetts sales tax at the time the fuel tax rate went to 21 cents per gallon. The 5% now represent a considerable amount more than the original 5%, however, it is still more cost effective to deduct the Pike miles and pay the excise tax. The following is the text of that letter. Do we expect a response? We would like one but we are realists in a real world. Government just doesn't care that much!

Mr. Alan LeBovidge  
Commissioner of Revenue  
Executive Administration  
100 Cambridge Street  
Boston, MA 02114

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RE: Massachusetts Turn Pike Miles  
and the ST-10 Excise Tax Filing

Dear Mr. LeBovidge:

With respect to the above referenced matter, please be guided by the following.

My name is James M. Burns and I am a Registered Practitioner before the Federal Motor Carrier Safety Administration, Federal Maritime Commission and various state and federal transportation regulatory agencies. I have been in private practice since 1977 representing shipper and carrier interests before regulatory bodies.

Part of my practice involves providing motor carriers with a fuel tax reporting service under the International Fuel Tax Agreement (IFTA) guidelines. A by-product of filings under IFTA for those carriers that deduct the Massachusetts Turn Pike (Pike) miles from the overall Massachusetts miles is the requirement to file an annual ST-10 excise tax return by April 15 of each year. The excise tax is 5% of the cost of the fuel consumed on the Pike for which the miles were deducted from the taxable miles on the IFTA quarterly return.

I am writing specifically to bring this matter to your attention. The excise tax of 5% is a factor of the 21 cents per gallon fuel tax in Massachusetts. When the 5% factor was established, it represented just about five cents of the total of 21 cents per gallon tax. The 5% factor was established at a time when the cost of fuel per gallon was just about a dollar exclusive of tax. You can only imagine what has happened to the ST-10 filings during the past several years with the constantly increasing cost of fuel. The 5% has become a significant factor this year with fuel that is approaching and passing the \$3.00 per gallon mark at the pump.

The reason for the deduction of miles generated on the Massachusetts Pike is due, in part, to the fact that the Pike does not receive any funding from the fuel tax that is collected in Massachusetts. Motor carriers pay a substantial amount of money to the Pike which in many cases exceeds what would be paid in fuel tax if there were no tolls on the Pike.

I am asking that the Department review this matter. I am sure that legislation must be enacted in order to change the rules governing this issue. I should mention that you have two individuals within your Department who have a particular expertise regarding this tax, Mr. Patrick O'Mohony and Mr. William Cuddy. I am sure that they would perhaps disagree with the term "expertise"; however, they are very modest gentlemen.

I should mention that only Massachusetts based carriers are faced with the excise tax filing when the deduction for Pike miles is made on the IFTA quarterly return. I do not believe that out of state carriers are in compliance and this puts Massachusetts based carriers at a great competitive disadvantage. Only the Department would be able to answer whether or not a significant number of out of state carriers comply with the ST-10 filing!

The toll bills for some Massachusetts based carriers can be as much as \$120,000.00 for a large fleet generating 800,000 miles on the Pike to just a few hundred dollars for a small fleet. The spread between taking the deductions and filing the ST-10 is becoming smaller and it would appear to me that the resulting tax can be classified as a windfall to the Commonwealth. I realize that there are very few politicians and bureaucrats who would consider any tax a "windfall" however, I do not believe that the original 5% factor was ever meant to represent the amount of tax revenue that it actually does today.

I have prepared a simple example of a carrier who generates 800,000 miles on the Pike and how the ST-10 effects its tax obligation. I am using a 5.00 miles per gallon as a base and have calculated the tax in a range from \$1.00 per gallon up to \$6.00 per gallon, (will we ever see fuel at \$6.00 per gallon – who ever thought we would see \$3.00 per gallon).

The carrier generating 800,000 Pike miles based on 5.00 MPG would only be spending \$33,600.00 in fuel tax obligations if the carrier did not have to pay the tolls on the Pike which amount to \$120,000.00 in this simple example.

The value of deducting the Pike miles will be lost at \$4.25 per gallon when the MPG is factored into the equation. This issue should be addressed by the Department in order to bring equity to this tax. In fact, there was only a hand full of registrants that were filing this tax until 2001. Additionally, this matter is also directly related to those registrants that file for refunds under the off-road usage guidelines of the Department and the tax has a similar affect on those entities as well.

EXCISE TAX SAMPLE/ST-10 FILING						
PIKE MILE	FLEET MPG	GALS. CONSUMED ON PIKE	COST PER GALLON	EXCISE TAX DUE	REFUND TO REGISTRANT PRIOR TO ST-10 ASSESSMENT	REFUND TO REGISTRANT AFTER ST-10 ASSESSMENT
800,000	5.00	160,000.00	\$1.00	\$8,000.00	\$33,600.00	\$25,600.00
800,000	5.00	160,000.00	\$1.25	\$10,000.00	\$33,600.00	\$23,600.00
800,000	5.00	160,000.00	\$1.50	\$12,000.00	\$33,600.00	\$21,600.00
800,000	5.00	160,000.00	\$1.75	\$14,000.00	\$33,600.00	\$19,600.00
800,000	5.00	160,000.00	\$2.00	\$16,000.00	\$33,600.00	\$17,600.00
800,000	5.00	160,000.00	\$2.25	\$18,000.00	\$33,600.00	\$15,600.00
800,000	5.00	160,000.00	\$2.50	\$20,000.00	\$33,600.00	\$13,600.00
800,000	5.00	160,000.00	\$2.75	\$22,000.00	\$33,600.00	\$11,600.00
800,000	5.00	160,000.00	\$3.00	\$24,000.00	\$33,600.00	\$9,600.00
800,000	5.00	160,000.00	\$3.25	\$26,000.00	\$33,600.00	\$7,600.00
800,000	5.00	160,000.00	\$3.50	\$28,000.00	\$33,600.00	\$5,600.00
800,000	5.00	160,000.00	\$3.75	\$30,000.00	\$33,600.00	\$3,600.00
800,000	5.00	160,000.00	\$4.00	\$32,000.00	\$33,600.00	\$1,600.00
800,000	5.00	160,000.00	\$4.25	\$34,000.00	\$33,600.00	-\$400.00
800,000	5.00	160,000.00	\$4.50	\$36,000.00	\$33,600.00	-\$2,400.00
800,000	5.00	160,000.00	\$4.75	\$38,000.00	\$33,600.00	-\$4,400.00
800,000	5.00	160,000.00	\$5.00	\$40,000.00	\$33,600.00	-\$6,400.00
800,000	5.00	160,000.00	\$5.25	\$42,000.00	\$33,600.00	-\$8,400.00
800,000	5.00	160,000.00	\$5.50	\$44,000.00	\$33,600.00	-\$10,400.00
800,000	5.00	160,000.00	\$5.75	\$46,000.00	\$33,600.00	-\$12,400.00
800,000	5.00	160,000.00	\$6.00	\$48,000.00	\$33,600.00	-\$14,400.00

I invite you to call me to discuss this matter. I would be happy to provide you with the taxpayers' perspective on this matter.

Thank you.

Sincerely,

---

**JAMES M. BURNS, REGISTERED PRACTITIONER**

JMB/ecb/ LEBOVIDGE MADOR A.APR.06

cc Mr. William O'Mahony  
Mr. William Cuddy



## NO SKID ZONE:

### TONY SOPRANO MAY BE COLLECTING YOUR TOLLS

#### NEW JERSEY TO SELL ROADS

You too can own a piece of the Garden State. The New Jersey legislature has a proposal before it to sell off the Jersey Turnpike and the Garden State Turnpike. The NJ Turnpike Authority wants to sell or lease a 49 per cent interest in the two roads to raise \$6 billion to help pay down the state's pension liabilities. The pension system like so many other pension systems is \$12 Bill in the hole. What has happened to all of the money?

"We have to find creative ways to deal with the budgetary deficits we face in this state," Sen. Lesniak told The Star-Ledger. The state could set up a for-profit corporation to run the highways. A non-controlling interest would be sold or leased to investors while the state would keep 51 percent ownership.

Corzine told The Associated Press he would be unwilling to sell or lease roads in the state without first examining situations in Indiana – which just OK'd a 75-year lease of the Indiana Toll Road to a foreign consortium – and Chicago where in 2005 the city leased its elevated highway known as the Skyway to the same foreign group for 99 years.

Those deals represent long-term loss of control of an important infrastructure that takes money out of the pockets of the users and less say then the toll payers had when the states controlled those two highways. And, in a related story, read on...

#### FOREIGN TOLL ROAD COMPANY WANTS BIGGER PIECE OF THE U.S.

One of the big foreign firms with a stake in the privatization of U.S. toll roads has found a gold mine, according to a recent report in the Wall Street Journal. That gold mine is the U.S. itself. The Macquarie Infrastructure Group of Australia is going so far as to sell or freeze assets in other countries to focus more on U.S. acquisitions, the Journal reported.

Macquarie is the company that has collaborated with Spanish-owned Cintra to lease the Indiana Toll Road, the Chicago Skyway and a few other pieces of U.S. infrastructure. Company officials have realized the profit potential of U.S. investments, Macquarie CEO Stephen Allen told the Journal. The real questions is why can these foreign entities do so well with US highways and when under the control and management of state government simply fail in their mission. The answer lies in the fact that government just can't seem to get the job done.

#### CONNECTICUT TRUCKING COMPANY OWNER AGAIN UNDER INVESTIGATION

Mr. Wilcox and his American Crushing and Recycling –whose dump truck was involved in a deadly crash in Connecticut in July 2005 – is under investigation once again following an auction of that

company's assets. Wilcox is currently facing charges of insurance fraud and larceny stemming from the 2005 accident that left four people dead, including the driver of the truck.

This time following the auction of his company's assets on March 28 Mr. Wilcox was caught on TV cameras from WTNH of New Haven wherein Wilcox allegedly having a cell phone conversation with a bidder during the auction.

The Attorney General of Connecticut, Richard Blumenthal said that based on the videotape, he was going to continue his investigation of Wilcox.

Authorities say Wilcox already tried to prevent the asset from being sold by destroying and falsifying documents and by trying to open a new company in New Hampshire to conceal some of the assets.

**SIDE BAR:**

*The year was 1970 and a young woman named Eleanor Ann Courtney, an elementary school teacher, was dating an eligible young bachelor with a budding career in transportation. Eleanor Ann decided that she would get in one more European vacation hoping that she would be married the following summer. A group of her friends planned the trip and took off that July for one last adventure. One of those friends was Maureen Farrell who was one of the victims of the American Crushing incident, Maureen Farrell Edlund. Eleanor Ann Courtney became Mrs. James M. Burns on July 10, 1971 and all of the traveling companions went their separate ways.*

As expected about \$1.6 million was raised at the auction, though most of that will go to creditors, leaving only a small amount for victims of the crash.

**YAK FAT REVISITED**

*The following item is from the Association of Transportation Law Practitioners bi-monthly **Highlights**, a group the Translaw has been a member since 1977, and brings back memories of the old days and the difficulty often faced by persons who appeared before the venerable Interstate Commerce Commission. In fact, in 1977 the Yak Fat story was already legend and often repeated and cited. The article was written by Mr. Frank N. Wilner and I offer it for its comic relief if not its ironic value.*

It was back in 1965 that Hilt Truck Line of Omaha published a tariff rate for transporting fat derived from the longhaired ox of Tibet and Central Asia. The rate was for 80,000-pound truckload lots of yak fat from Omaha to Chicago.

In those days of stupendously idiotic economic regulations, a railroad challenged the rate as non-compensatory (as carriers could do back then), and the ICC suspended the rate pending formal investigation.

Trucker Robert Hilt fessed up:

The yak fat rate was published in our tariff to determine if the numerous rate protests we have been receiving from the railroads were to protect railroad traffic or just a form of

harassment. Our research has showed that there is not a single yak within 10,000 miles of Omaha - even in zoos.

The railroads' Western Trunk Line Committee had filed a seven-page protest asserting the proposed rate on yak fat was non-compensatory in the light of cost data.

With the fraud revealed, the ICC dismissed the complaint.

Now we learn that communist China has completed the first railway line to Tibet - one of the world's highest-elevation train routes, which climbs 16,640-feet above sea level. Passenger cars are sealed like aircraft to protect riders from altitude sickness.

The pregnant question is: Will the new railroad be hauling yaks - or fat derived from them?

*Thank you, Mr. Wilner!*

### **HOS EXEMPTION FOR SOME HAZMAT HAULERS OPEN FOR COMMENT**

FMCSA is accepting comments on an application for exemption from a requirement in the hours-of-service rules from the Institute of Makers of Explosives. The obligation of drivers of commercial motor carrier carrying 1.1, 1.2 and 1.3 explosives exist not only for safety but security reasons, according to the Institute. The conflict between the regs that require some hazmat loads be constantly attended and the hours-of-service regs puts drivers in a position to make a tough decision.

Truckers can't attend to a load and log it as off-duty time. And, they can't take the off-duty time and not attend to the load. That leaves them faced with violating one set of regs, just to comply with the other. The explosives institute has asked FMCSA to allow a member of a driving team who is transporting hazardous materials requiring constant attendance and is using the sleeper berth to be allowed to exit it for brief periods without being considered on-duty.

### **I. D. CARDS FOR TRANSPORT WORKERS**

#### **BACKGROUND CHECKS FOR TRANSPORTATION WORKERS DOWN THE ROAD**

The Department of Homeland Security (DHS) will be issuing a rule in 2006 that calls for a single ID card for all transportation workers in the United States, and; It has been reported that the agency is moving forward very aggressively.

A proposed rule will be published this spring with a comment period and a final rule by years end.

Currently, hazmat drivers undergo an extensive background check and it is expected that the proposed rule will resemble the hazmat background check procedure. The DHS is modeling its program after the hazmat program. At this juncture finger printing and other "biometrics" will be

employed; however, it is unclear what convictions and “events” in one’s past will prevent the issuance of the soon to be coveted “ID Card”.

### **PENNSYLVANIA TRUCKING GROUP WANTS DATABASE OF DRIVER DRUG TESTS**

The Pennsylvania Motor Truck Association, with the backing of the ATA, is hoping to set up a statewide database of employer records on drivers’ drug test results. Several such databases already exist in other states, such as Washington, Oregon, North Carolina and Texas.

If the proposal is successful the database would either operate as a separate entity containing drug and alcohol testing records for drivers, or the data would be incorporated into a driver’s CDL information. It has been reported that no matter how it’s handled, only two entities would likely have access to the database – the state and federal governments, and a given driver’s employer or prospective employer.

At least one group is opposed to this move, The Owner-Operators Independent Drivers Association (OOIDA) and we are sure that many other groups will oppose the proposal as well.

TRANSTRENDS thinks that there are enough data bases that do nothing and adding another one won’t accomplish much other than to employ a new group of bureaucrats on state/federal payrolls costing money. The National ID card for transport workers should take care of this matter if it is deemed necessary. It is easier to control one data base rather than many spread all over the country particularly when one data base doesn’t “talk” to the other.

### **IT’S NOT NICE TO CHEAT THE TAX MAN**

An oil company owner pleads guilty to selling diesel illegally to construction companies in the Middletown, NY area. Thomas Russell the owner of the aptly named Reliable Oil in Bethel, NY, pleaded guilty to selling the fuel, even though he wasn’t licensed for it. The problem was that Russell was only licensed to deliver home heating oil but apparently was selling that type of oil to construction companies that used it for on the road purposes. Russell got caught for failing to pay the state taxes for motor fuels.

Russell was charged with 18 felony counts of illegally selling diesel fuel. His guilty plea got Russell a deal with a five-year probation sentence. He must also pay \$5,265 in taxes to the New York State Department of Taxation and Finance. It seems that Mr. Russell was caught early in his new career of marketing petroleum since the taxes only represents about 16,000 to 17,000 gallons of fuel.

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