



EVERETT TRANSTRENDS

THE TRANSLAW GROUP, INC.

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IF YOU WISH TO END YOUR SUBSCRIPTION TO TRANSTRENDS, SIMPLY SEND AN EMAIL REQUESTING A CANCELLATION TO JBURNS@TRANSREGS.COM

WILL MASSACHUSETTS REALLY, REALLY ELIMINATE THE TOLLS ON THE PIKE

Most of the tolls on the 138-mile-long Massachusetts Turnpike may be eliminated before long. The Associated Press reports that the board of the Turnpike Authority this week proposed dropping the tolls everywhere except in the Boston metro area. A vote on the proposal is set for next month. Massachusetts residents were promised that when the original toll road bonds were paid off, the tolls would be dropped. However, the bonds were paid off 23 years ago.

Several months ago the Translaw Group sent a letter to the MA DOR highlighting the disparity between the fuel tax, excise tax and the cost of tolls on the Pike. The MA DOR although sympathetic was unmoved by our letter. 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 almost all cases exceeds what would be paid in fuel tax if there were no tolls on the Pike.

Massachusetts based carriers are faced with the excise tax filing when the deduction for Pike miles is made on the IFTA quarterly return. There is no official word from the state, however, out of state

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carriers generally are not paying the ST-10 excise tax and the commonwealth has no way to collect this tax from carriers that are domiciled out of state (out of reach). Massachusetts based carriers that are in compliance are at a great competitive disadvantage compared to their competitive counter parts not domiciled in Massachusetts.

The toll bills for some Massachusetts based carriers can be as much as \$120,000.00 annually 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 the Translaw Group that the resulting tax can be classified as a windfall to the Commonwealth. But, have you ever run into a politician, especially a Massachusetts politician, 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 generates today.

The following sample is illustrative of a carrier who generates 800,000 miles on the Pike and how the ST-10 effects its tax obligation. Using a 5.00 miles per gallon as a base and calculating 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.

PIKE MILES	FLEET MPG	GALS CONSUMED ON PIKE	COST PER GALLON	EXCISE TAX DUE	REFUND TO TAXPAYER PRIOR TO ST-10 ASSESSMENT	REFUND TO TAXPAYER 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

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 MA DOR 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.

Based on the above it is highly unlikely that the Commonwealth is really going to let this kind of revenue slip through their greedy little hands. We think the whole ploy is aimed at helping Kerry Healey grab that coveted plum on Beacon Hill. Perhaps under Kerry Healey we might not see the type of toll increases that Daval Patrick will champion. After all, Mr. Patrick hasn't seen a more "caring", "thoughtful" or "eloquent" tax as the ST-10 that is then frosted with all of that precious toll revenue.

It is truly a win win situation for all of the bureaucrats and patronage princes in Boston. We don't think you will ever see the tolls go south.

PANEL INVESTIGATING FATAL OVERPASS COLLAPSE IN QUEBEC

The chairman of a panel conducting a public inquiry into the devastating collapse of a Quebec overpass says he will not be playing the blame game.

The overpass in Laval, north of Montreal, was only about halfway through its projected lifespan of 70 years when a 60-foot chunk fell Saturday and crushed several cars, killing five people and injuring six.

The main questions the three appointed panelists will try to answer involve the events leading up to the collapse of de la Concorde Boulevard over Autoroute 19 in Laval, including witness reports of smaller chunks falling from the structure prior to the collapse.

Canadian and American media are pressing to find out if other such tragedies could occur elsewhere and what their governments are doing to ensure the integrity of all infrastructure.

The panelists visited the site Wednesday to begin the arduous task of piecing the event together. The panel will not disclose any working theories until the investigation is complete. A husband and wife and the husband's brother, all in their 40s, were killed in one of the crushed cars. A man and woman, both 28, were killed in the other car. Six other people were injured, including one person still in intensive care. All of the families were from Quebec.

Highway 19 in the Laval region remains closed indefinitely which has disrupted traffic in and around the northern metropolitan Montreal area.

BIG DIG GRAND JURY CONVENES IN BOSTON

A grand jury is in session in Boston this week to decide if there are grounds for criminal charges in connection with a Big Dig tunnel ceiling collapse that killed a woman in July. The Boston Globe reported that the grand jury has the power to force people to testify who have, so far, been

unwilling to talk. The Massachusetts attorney general impaneled the special grand jury Tuesday, Oct. 3.

SCHWARZENEGGER REJECTS BILL TO ALLOW LICENSES FOR ILLEGAL IMMIGRANTS

For the second time in as many years, Gov. Arnold Schwarzenegger has vetoed a bill to allow illegal immigrants in California to obtain licenses that could be used only for driving. The governor made no secret of his intent to kill the bill. He said the effort is premature because the state is waiting for federal regulations on state identification cards designed to combat terrorism.

Schwarzenegger said his office is working with federal officials to develop the federal guidelines for the REAL ID Act passed after the 2001 terrorist attacks.

Sen. Gil Cedillo, D-Los Angeles, said his bill complied with federal law. However, he said it goes beyond what federal law requires, The Associated Press reported. The bill – SB1162 – called for special driver's licenses for undocumented immigrants that look different than licenses for U.S. citizens and legal aliens. The version for illegal immigrants would not be valid for identification or purposes other than driving.

This was Cedillo's seventh attempt to legalize driving for illegal immigrants. Former Gov. Gray Davis vetoed two efforts. One was signed only to be repealed, another was denied a key hearing and two more were rejected by Schwarzenegger before his recent action. Cedillo vowed to push the legislation again next year.

CAN I ASSESS A FUEL SURCHARGE

Often, shippers question on what authority does a motor carrier base the institution and collection of a fuel surcharge.

Prior to the sun setting of the Interstate Commerce Commission (ICC) that question could be simply answered by the many decisions that the former ICC issued giving permission to institute and collect such charges when warranted by extenuating circumstances. In fact, when the ICC issued such decisions it was incumbent upon each carrier to charge and collect the mandated surcharge.

The ICC was put into the sun set through the **INTERSTATE COMMERCE COMMISSION SUNSET ACT OF 1995**. Much confusion surrounded the sun setting of the ICC, one area that to this day still seems to confuse the public deals with the ability of motor common and motor contract carriers to set rates on their own without government oversight. The only requirements concerning rates are that common carriers must publish their rates and keep them on file at their place of business and contract carriers must enter into a contract with each shipper and the rates and charges must be contained in the contract and be in writing.

Carriers today do not need any special authority to institute and collect fuel surcharges other than to maintain the surcharge information in a common carrier tariff for common carriers and in a contract for contract carriers.

And, as far as maintaining common carrier tariffs, a common carrier need only maintain the tariff at its place of business but must produce a copy at the request of the shipper or some other member of the public.

Please review the following...

Sec. 14706(c)(1)(B) [Carmack Amendment provisions]
(B) CARRIER NOTIFICATION- If the motor carrier is not required to file its tariff with the Board, it shall provide under section 13710(a)(1) to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices upon which any rate applicable to a shipment, or agreed to between the shipper and the carrier, is based. The copy provided by the carrier shall clearly state the dates of applicability of the rate, classification, rules, or practices.

And, for further clarification, please review the following as well...

Sec. 13710. Additional billing and collecting practices
(a) MISCELLANEOUS PROVISIONS-
(1) INFORMATION RELATING TO BASIS OF RATE- A motor carrier of property (other than a motor carrier providing transportation in noncontiguous domestic trade) shall provide to the shipper, on request of the shipper, a written or electronic copy of the rate, classification, rules, and practices, upon which any rate applicable to its shipment or agreed to between the shipper and carrier is based.

Therefore, the only requirement to institute and collect a fuel surcharge for a common carrier is to establish a tariff item and to publish it in the carrier's tariff which remains on file at the carrier's place of business. The carrier need only produce the pertinent portion of the tariff at the request of the shipper.

A common carrier on the other hand would need to incorporate a fuel surcharge in the contract between the carrier and the shipper. If the shipper did not want to pay the fuel surcharge it could justifiably do so, however, I am sure that the carrier would terminate the contract particularly when such contracts generally have very liberal cancellations clauses, (generally on 30 days notice without cause).

In conclusion, if the common carrier has a tariff rule concerning a fuel surcharge it has the authority to collect such charge and does not need any governmental approval to do so.

PROPER DOOR SIGNAGE RULES AND REGULATIONS

Each motor carrier or fleet operator must become aware of the fact that it must now display the US DOT number on each vehicle as prescribed below. Further, your attention is directed to "MARKINGS OF A CMV". This section will advise you as to what must appear on the vehicle in the way of markings that are mandated by the US DOT.

Please become familiar with this material and if you have any questions, please feel free to call this office. The pertinent material is presented in abstract below.

Section 390.21 Marking of Commercial Motor Vehicles

This section of the Code of Federal Regulations outlines the marking requirements regarding the display of US DOT numbers on commercial motor vehicles.

(a) General. Every self-propelled commercial motor vehicle, as defined in § 390.5, subject to subchapter B of this chapter must be marked as specified in paragraphs (b), (c), and (d) of this section.

(b) Nature of Marking. The marking must display the following information:

(1) The legal name or a single trade name of the motor carrier operating the self-propelled motor vehicle, as listed on the Motor Carrier Identification Report (Form MCS-150) and submitted in accordance with § 390.19.

(2) The motor carrier identification number issued by the Federal Motor Carrier Safety Administration, preceded by the letters "US DOT"

(3) If the name of any person other than the operating carrier appears on the commercial motor vehicle, the name of the operating carrier must be followed by the information required by paragraphs (b)(1), and (2) of this section, and be preceded by the words "operated by."

(4) Other identifying information may be displayed on the vehicle if it is not inconsistent with the information required by this paragraph.

The following are examples of proper door signs...

ABC Trucking, Inc.
US DOT NO. 123456

ABC Trucking, Inc.
Springfield, MA
US DOT NO. 123456

ABC Trucking, Inc.
Springfield, MA
US DOT NO. 123456
MC-99999

ABC Trucking, Inc.
10 Main Street
Springfield, MA 01101
US DOT NO. 123456

ABC Trucking, Inc.
10 Main Street
Springfield, MA 01101
US DOT NO. 123456
MC-99999

Note: The lettering, generally, should be at least 3" in height and in a contrasting color that is readable at 50 feet.

(5) Each motor carrier shall meet the following requirements pertaining to its operation:

(i) All commercial motor vehicles that are part of a motor carrier's existing fleet on July 3, 2000, and which are marked with an ICC-MC number must come into compliance with paragraph (b)(2) of this section by July 3, 2002.

(ii) All commercial motor vehicles that are part of a motor carrier's existing fleet on July 3, 2000, and which are not marked with the legal name or a single trade name on both sides of their commercial motor vehicles, as shown on the Motor Carrier Identification Report, Form MCS-150, must come into compliance with paragraph (b)(1) of this section by July 5, 2005.

(iii) All commercial motor vehicles added to a motor carrier's fleet on or after July 3, 2000, must meet the requirements of this section before being put in service and operating on public ways.

(c) Size, shape, location, and color of marking. The marking must -

(1) Appear on both sides of the self-propelled vehicle;

(2) Be in letters that contrast sharply in color with the background on which the letters are placed;

(3) Be readily legible, during daylight hours, from a distance of 50 feet (15.24 meters) while the commercial vehicle is stationary; and

(4) Be kept and maintained in a manner that retains the legibility required by paragraph (c)(3) of this section.

(d) Construction and durability. The marking may be painted on the motor vehicle or may consist of a removable device, if that device meets the identification and legibility requirements of paragraph (c) of this section, and such marking must be maintained as required by paragraph (c)(4) of this section.

ROAD RAGE ENDS IN ALLEGED CROSSBOW ASSAULT

In Arkansas, the 26-year-old driver of an SUV gave new meaning to the expression "road rage" last weekend when he allegedly fired a crossbow at a motorist who'd flipped him off. According to The Associated Press, the crossbow's arrow shattered the other driver's rear window, but didn't injure him. Police arrested Wayne Dierks and charged him with drunken driving, driving with a suspended license and committing a terrorist act. The archery and crossbow hunting season for deer and turkey is open in Arkansas, so it's not unusual that someone would have a crossbow in their car – just that they'd shoot it at another driver.

END

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