

TRANSPORT AMENDMENT (No. 2) BILL

EXPLANATORY NOTE

This Bill amends the Transport Act 1962.

Clause 1 relates to the Short Title and commencement. *Clauses 4 (1), 5, and 6* (relating to registration and licensing) and *clauses 10 to 13* (relating to motor-spirits tax and milage tax) are to come into force on 1 July 1966, which is the date of commencement of a licensing year. The other provisions are to come into force on the date of the passing of the Act.

Clause 2 amends the definition of "contract" in section 2 (1) of the principal Act, and excludes a contract of hiring of a taxicab.

Clause 3 amends the definition of "motor vehicle" in section 2 (1) of the principal Act. At present, the term includes a trailer except a trailer designed as part of the armament of any of Her Majesty's Forces. The effect of this clause is that such a trailer will be included in the definition of "motor vehicle" if it is designed solely for the carriage of goods.

Clause 4, subclause (1): This subclause repeals section 7 (3) of the principal Act, which provides that certain trailers and tractors owned by Harbour Boards are exempt from registration and licensing. This provision will come into force on 1 July 1966.

Subclause (2): By section 7 (4) of the principal Act an agricultural trailer is exempt from registration and licensing if it is being drawn or propelled by a registered and licensed agricultural tractor. The effect of this clause is to extend that exemption to cases where the trailer is being drawn or propelled by any registered and licensed motor vehicle.

Clause 5 repeals section 9 (3) of the principal Act, which exempts from payment of registration fees any agricultural tractor and any trailer that is drawn or propelled exclusively by an agricultural tractor. This provision will come into force on 1 July 1966.

Clause 6 re-enacts in an amended form section 13 of the principal Act, relating to the classes of motor vehicles that are exempt from payment of annual licence fees. At present, motor vehicles owned by the Crown, the National Roads Board, a local authority, the Auckland Transport Board, or the Christchurch Transport Board are exempt if they are used exclusively or principally in connection with the construction or maintenance of roads or motorways. Further classes of motor vehicles may be exempted by Order in Council, which may delegate to the Minister the power to grant exemptions.

The new section 13 applies to both registration fees and annual licence fees, and provides that all exemptions are to be made by Order in Council. As at present, the order may delegate to the Minister the power to grant exemptions. This provision will come into force on 1 July 1966.

Clause 7 provides a right of appeal to the Transport Licensing Appeal Authority against a decision of a Licensing Authority, on a review under section 134 of the principal Act of taxicab services, authorising a specified number of additional taxicabs in the area under review or declining to authorise an additional number.

Where the appeal is against a decision to authorise a number of additional licences, the appeal must be heard in conjunction with an appeal from a decision of the Licensing Authority granting one of the additional licences.

Clause 8 confers on the Consumer Council a right of appeal to the Transport Licensing Appeal Authority against decisions of a Licensing Authority.

Clause 9 confers on the Consumer Council a right of appeal to the Transport Charges Appeal Authority against decisions of a public body or the Commissioner relating to transport charges.

Clause 10 amends section 188 of the principal Act, relating to refunds of duty on motor spirits. At present, the following refunds are payable:

- (a) A refund at the rate of 1s. 5d. a gallon is payable in the case of motor spirits used as fuel for commercial fishing boats or as fuel for aircraft:
- (b) A refund at the rate of 1s. 3d. a gallon is payable in the case of motor spirits used as fuel for motor vehicles that are exempt from payment of annual licence fees or used otherwise than as fuel for motor vehicles.

Subclauses (1) and (2) of this clause alter these provisions, and provide for the division of motor vehicles into three classes for refund purposes, as follows:

- (a) Motor vehicles of Class A. These are motor vehicles that are exempted from the payment of registration fees and annual licence fees by section 13 of the principal Act as substituted by *clause 6* of this Bill. A rebate of the full amount of duty of 1s. 5 $\frac{3}{4}$ d. a gallon will be payable in respect of motor spirits used in vehicles of this class.
- (b) Motor vehicles of Class B. These are motor vehicles declared to be in this class by Order in Council. A rebate of the full amount of duty of 1s. 5 $\frac{3}{4}$ d. a gallon will be payable in respect of motor spirits used in vehicles of this class.
- (c) Motor vehicles of Class C. These are motor vehicles declared to be in this class by Order in Council. A rebate of 1s. a gallon will be payable in respect of motor spirits used in vehicles of this class.

In addition a rebate of the full amount of duty of 1s. 5 $\frac{3}{4}$ d. a gallon will be payable in respect of motor spirits used otherwise than as fuel for a motor vehicle.

Subclause (3) re-enacts in an amended form section 188 (8) of the principal Act, relating to applications for a refund of motor spirits duty. At present the application must be made within 3 months after the end of the quarter in which the motor spirits are used, and, if the application is made later than 2 months after the end of the quarter, the amount of the refund is reduced by 10 per cent.

The new subsection provides that no refund will be made unless application is made for the refund within 6 months after the end of the quarter. If application is made after 2 months from the end of the quarter but within 4 months, the amount of refund will be reduced by 10 per cent. If application is made after 4 months but within 6 months, the amount of the refund will be reduced by 25 per cent.

This provision is to come into force on 1 July 1966.

Clause 11 inserts a new section 188A in the principal Act, designed to prevent the misuse of aviation fuel by using it in motor vehicles. Arrangements are being made that will enable aviation fuel to be sold free of duty, instead of the present procedure by which duty is paid by the purchaser who subsequently obtains a refund.

The new section provides that authorised officers of the Transport Department who have good cause to suspect that there is aviation fuel in the fuel tank of a motor vehicle being used on any road may inspect, and take samples from, the fuel tank of that vehicle. It is made an offence for the person in charge not to allow the officer to inspect the fuel tank and take a sample of its contents, and it will also be an offence for any person to use a motor vehicle on any road if its fuel tank contains aviation fuel. In the latter case, it will be a defence to the person charged if he satisfies the Court that he had no knowledge that the fuel tank contained aviation fuel.

This provision is to come into force on 1 July 1966.

Clause 12 exempts from payment of milage tax any motor vehicle classified in Class A or Class B pursuant to section 188 (3) of the principal Act (as substituted by *clause 10* (2) of this Bill) and also any trolley omnibus.

The exemption for trolley omnibuses is not new. They are at present exempt from milage tax by the Motor Vehicle Taxation Regulations 1963 (S.R. 1963/116).

This provision is to come into force on 1 July 1966.

Clause 13 inserts a new section 191A in the principal Act, intended to prevent evasions of milage tax. The new section requires owners of motor vehicles in respect of which milage tax is payable to keep such accounts, waybills, and other records as are necessary to enable the number of miles over which the vehicles are used to be determined, and to make those accounts, waybills, and records available for inspection within 12 months by authorised officers of the Transport Department.

Where the milage returned for any quarter is less than 90 per cent of the milage recorded on the milage recorder fitted to a motor vehicle, the Deputy Registrar may require the owner to prove the correctness of the return.

Where the Deputy Registrar is dissatisfied with the correctness of a return, or where a person required to make a return fails to do so, the Deputy Registrar is to report that fact to the Commissioner, who may determine the milage of the motor vehicle for the quarter and assess the owner for the amount of milage tax payable pursuant to that determination. The owner will have a right of objection to the Commissioner against that assessment, and, if the Commissioner does not allow the objection, the objector may require the objection to be heard and determined by a Magistrate's Court.

This provision is to come into force on 1 July 1966.

Hon. Mr McAlpine

TRANSPORT AMENDMENT (No. 2)

ANALYSIS

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A BILL INTITULED

An Act to amend the Transport Act 1962

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Transport Amendment Act (No. 2) 1965, and shall be read together with and deemed part of the Transport Act 1962* (hereinafter referred to as the principal Act).

10 (2) Subsection (1) of section 4, sections 5 and 6, and sections 10 to 13 of this Act shall come into force on the first day of July, nineteen hundred and sixty-six.

(3) Except as otherwise provided in subsection (2) of this section, this Act shall come into force on the date of its passing.

*1962, No. 135

Amendments: 1963, Nos. 62, 119; 1964, No. 126

2. Meaning of contract—Section 2 of the principal Act is hereby amended by adding to the definition of the term “contract” in subsection (1) the words “or a contract of hiring of a taxicab”.

3. Meaning of “motor vehicle”—Section 2 of the principal Act is hereby further amended by repealing paragraph (c) of the definition of the expression “motor vehicle” in subsection (1), and substituting the following paragraph: 5

“(c) A trailer (not being a trailer designed solely for the carriage of goods) that is designed exclusively as part of the armament of any of Her Majesty’s Forces; or” 10

4. Registration and licensing of motor vehicles—(1) Section 7 of the principal Act is hereby amended by repealing subsection (3). 15

(2) Section 7 of the principal Act is hereby further amended by omitting from subsection (4) the words “an agricultural tractor”, and substituting the words “a motor vehicle”. 15

5. Registration fees for agricultural tractors and trailers—Section 9 of the principal Act is hereby amended by repealing subsection (3). 20

6. Exemption from registration and annual licence fees—The principal Act is hereby further amended by repealing section 13, and substituting the following section:

“13. (1) The Governor-General may from time to time, by Order in Council, exempt from the payment of registration fees and annual licence fees any specified motor vehicle or class of motor vehicles, and may in like manner vary or revoke any such Order in Council. Any such Order in Council may delegate to the Minister authority to exempt from the payment of registration fees and annual licence fees any specified motor vehicle or any specified class of motor vehicles. 25 30

“(2) The licence and registration plates issued for any motor vehicle exempted from the payment of registration fees and annual licence fees by virtue of this section shall exhibit such general distinguishing mark or distinguishing marks as may be prescribed; and the Registrar shall keep under section 16 of this Act a special register of all motor vehicles so exempted.” 35

7. Extension of right of appeal to Licensing Appeal Authority—Section 166 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

- 5 “(1A) Where by its decision on a review of taxicab services under section 134 of this Act the Licensing Authority—
“(a) Notifies its intention, pursuant to subsection (5) of that section, to authorise a specified number of additional taxicabs in any area; or
10 “(b) Does not notify any such intention,—
there shall be a right of appeal from that decision to the Licensing Appeal Authority within twenty-one days after the notification of the decision of the Licensing Authority on the review:
15 “Provided that any appeal in respect of any such decision of a Licensing Authority notifying its intention to authorise a number of additional taxicabs in any area may be heard and determined only in conjunction with an appeal from a decision of the Licensing Authority in respect of an application for an
20 additional taxicab licence pursuant to that notification.”

8. Appeals to Licensing Appeal Authority—Section 166 of the principal Act is hereby further amended by inserting in subsection (2), after paragraph (j), the following paragraph:

- 25 “(jj) The Consumer Council established under section 8 of the Finance Act 1959:”.

9. Appeals to Charges Appeal Authority—Section 167 of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

- 30 “(cc) The Consumer Council established under section 8 of the Finance Act 1959:”.

10. Refunds of duty on motor spirits—(1) Section 188 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

- 35 “(1) Subject to the provisions of section 190 of this Act, this section applies to motor spirits in respect of which no exemption from or refund of Customs duty or motor spirits duty has been granted under any other enactment and which is used for any of the following purposes:
40 “(a) As fuel for any motor vehicle (other than a motor vehicle used with dealers’ plates pursuant to subsection (6) of section 22 of this Act) in respect of which an annual licence fee is not payable under section 12 of this Act; or

“(b) As fuel for any specified motor vehicle or any specified class of motor vehicle to which the provisions of this section are applied by Order in Council; or

“(c) Otherwise than as fuel for any motor vehicle.

“(1A) Any Order in Council made under paragraph (b) of subsection (1) of this section shall specify the classification for the purposes of subsection (3) of this section of the motor vehicle or class of motor vehicle to which the order relates.”

(2) Section 188 of the principal Act is hereby further amended by repealing subsection (3) (as amended by section 19 (1) of the Transport Amendment Act 1964), and substituting the following subsections:

“(3) The refunds authorised by this section shall be computed as follows:

“(a) In respect of any motor spirits used as fuel for a motor vehicle of Class A – that is to say, any motor vehicle which is exempted from the payment of registration fees and annual licence fees by virtue of section 13 of this Act – a refund at the rate of one shilling and fivepence three farthings a gallon shall be made:

“(b) In respect of any motor spirits used as fuel for a motor vehicle of Class B – that is to say, any motor vehicle which is declared by Order in Council to be a vehicle of Class B for the purposes of this section – a refund at the rate of one shilling and fivepence three farthings a gallon shall be made:

“(c) In respect of any motor spirits used as fuel for a motor vehicle of Class C – that is to say, any motor vehicle which is declared by Order in Council to be a vehicle of Class C for the purposes of this section – a refund at the rate of one shilling a gallon shall be made:

“(d) In respect of any motor spirits used otherwise than as fuel for a motor vehicle, a refund at the rate of one shilling and fivepence three farthings a gallon shall be made.

“(3A) On and after the date of the commencement of Part II of the Decimal Currency Act 1964, subsection (3) of this section shall have effect as if—

“(a) For the words ‘one shilling and fivepence three farthings’, wherever they occur, there were substituted in each case the words ‘fourteen cents and eight-tenths of a cent’:

“(b) For the words ‘one shilling’ in paragraph (c) there were substituted the words ‘ten cents’,—
and, where that date is not the first day of a quarter, the amount of any refund under this section in respect of motor spirits used during the quarter in which that Part comes into force shall be calculated in decimal currency in accordance with this subsection, whether the motor spirits were used before or after the commencement of that Part.”

(3) Section 188 of the principal Act is hereby further amended by repealing subsection (8), and substituting the following subsection:

“(8) Applications for refunds under this section shall be made in respect of the periods ending respectively with the last day of March, June, September, and December in any year. Except as provided in subsection (9) of this section, no refund under this section shall be made unless application for the refund is made within six months following the close of the period in respect of which it is made. Where the application is made after the expiration of two months from the close of that period, the amount of the refund otherwise payable shall be reduced by an amount equal to ten per cent thereof. Where the application is made after the expiration of four months from the close of the appropriate period but within six months of the close of that period, the amount of the refund otherwise payable shall be reduced by an amount equal to twenty-five per cent thereof.”

(4) Section 19 of the Transport Amendment Act 1964 is hereby consequentially amended by repealing paragraphs (a) and (b) of subsection (1).

11. Misuse of aviation fuel—The principal Act is hereby further amended by inserting, after section 188, the following section:

“188A. (1) For the purposes of this section the expression ‘aviation fuel’ means motor spirits for use in aircraft, being motor spirits in respect of which an exemption or refund has been granted under the provisions of the Customs Act 1913 or the Motor Spirits Duty Act 1961.

“(2) Any officer of the Department, duly authorised in writing for the purpose by the Commissioner, who has good cause to suspect that there is aviation fuel in the fuel tank of a motor vehicle being used on any road shall be entitled to inspect, and take samples from, the fuel tank of that vehicle;

and for that purpose the person for the time being in charge of the motor vehicle shall at the request of any such officer, and on the production by that officer, if so required, his authority from the Commissioner, permit the officer to inspect the fuel tank and take a sample of its contents. 5

“(3) Every person commits an offence, and is liable to a fine not exceeding one hundred pounds, who—

“(a) Being in charge of a motor vehicle on any road, refuses or fails to comply with any request of a duly authorised officer made under subsection (2) of this section; or 10

“(b) Uses on any road a motor vehicle the fuel tank of which contains aviation fuel:

“Provided that it shall be a good defence in proceedings for an offence against this paragraph (b) if the defendant satisfies the Court that he had no knowledge that the fuel tank of the motor vehicle contained any aviation fuel. 15

“(4) In any proceedings for an offence against paragraph (b) of subsection (3) of this section, a certificate purporting to be signed by an officer of the Dominion Laboratory that any specified motor spirits submitted to him for analysis were motor spirits for use in aircraft shall, in the absence of proof to the contrary, be sufficient evidence that those motor spirits were for use in aircraft.” 20 25

12. *Milage tax*—(1) Section 191 of the principal Act is hereby amended by inserting in paragraph (a) of subsection (1), after the words “attendance at fires,” the words “or a motor vehicle classified in Class A or Class B by or pursuant to section 188 of this Act or a trolley omnibus”. 30

(2) The Second Schedule to the principal Act is hereby consequentially amended—

(a) By omitting from clause 1 the words “(not being traction engines or vehicles designed solely or principally for the use of fire brigades in attendance at fires)”, and substituting the words “to which section 191 of this Act applies”: 35

(b) By inserting in clause 2, after the words “motor vehicles”, the words “to which section 191 of this Act applies”. 40

(3) Subsection (2) of this section shall be deemed to be repealed on the date of the commencement of section 14 of the Transport Amendment Act 1965.

13. Assessment of milage tax—The principal Act is hereby further amended by inserting, after section 191, the following section:

5 “191A. (1) Every person who is required to pay milage tax in respect of any motor vehicle to which section 191 of this Act applies shall—

10 “(a) Keep such accounts, waybills, or other records as are necessary to enable to be determined the total number of miles of public highway over which the vehicle was used during every quarter in respect of which a return is required to be made under subsection (3) of section 191 of this Act; and

15 “(b) Make all such accounts, waybills, and other records available for inspection by any officer duly authorised in writing in that behalf by the Commissioner at any reasonable time during the period of twelve months next ensuing from the expiration of that quarter.

20 “(2) In any case where the total number of miles of public highway over which a motor vehicle was used declared in a return made under subsection (3) of section 191 of this Act is less than ninety per cent of the milage recorded on the milage recorder fitted to the motor vehicle, the Deputy Registrar may require the owner of the vehicle to produce 25 such evidence as may be necessary to establish, to the satisfaction of the Deputy Registrar, the correctness of the return.

30 “(3) In any case where the Deputy Registrar is dissatisfied with the correctness of a return, or where a person required to make a return under section 191 of this Act fails to make a return within the prescribed time, the Deputy Registrar shall report the fact to the Commissioner, who may thereupon determine the total number of miles of public highway over which any motor vehicle specified in the return, or, as the case may be, in respect of which a return should have been 35 made, was used and assess the amount of milage tax payable pursuant to that determination. The Commissioner shall give notice of the assessment to the person making the return or, as the case may be, to the person failing to make the return.

40 “(4) Any person who has been assessed for milage tax under the provisions of subsection (3) of this section may object to the assessment by delivering to the Commissioner a written notice of objection stating the grounds of his objection, within such time as may be specified in that behalf in the notice of assessment, being not less than fourteen days after the date on 45 which that notice of assessment is given. No notice of objection

given after the time so specified shall be of any force or effect unless the Commissioner, in his discretion, accepts the same and gives notice to the objector accordingly.

“(5) The Commissioner shall consider every such objection, and may cancel or reduce the amount of the assessment pursuant thereto or confirm the assessment; but, if an objection is not allowed by the Commissioner, the objector may, within six months after the date on which notice of the disallowance is given to him by or on behalf of the Commissioner, by notice in writing to the Commissioner require that the objection be heard and determined by a Magistrate’s Court, and in that event the objection shall be heard and determined in a Magistrate’s Court before a Magistrate alone; and the Court shall for the purpose of hearing and determining the objection, whatever the amount involved, have all the powers vested in it in its ordinary civil jurisdiction as if in an action between the objector and the Commissioner.

“(6) On the hearing and determination by a Magistrate’s Court of an objection to an assessment of milage tax under this section—

“(a) The burden of proof shall be on the objector:

“(b) The Court may receive such evidence as it thinks fit, whether receivable in accordance with law in other proceedings or not:

“(c) The Court may confirm or cancel the assessment or reduce the amount thereof:

“(d) The Court may award such costs as it deems just, either against the Commissioner or the objector:

“(e) The decision of the Court shall be final.

“(7) Any additional amount of milage tax payable pursuant to an assessment under this section, or, as the case may be, pursuant to an assessment as reduced on objection under this section, shall be paid to the Deputy Registrar by the owner of the motor vehicle—

“(a) Where no objection is made against the assessment, within one month after the date on which notice of the assessment is given to the owner:

“(b) Where an objection made against the assessment is not allowed by the Commissioner or the assessment is reduced by the Commissioner and the owner does not require the objection to be heard and determined by a Magistrate’s Court, within one month after the date on which notice is given to the owner of the disallowance of the objection or, as the case may be, of the reduced amount of the assessment;

5 “(c) Where the owner requires his objection to be heard and determined by a Magistrate’s Court, within one month after the date on which notice of the determination of the Court disallowing the objection or reducing the amount of the assessment is given to the owner.”