

TRANSPORT AMENDMENT (NO. 2) BILL

EXPLANATORY NOTE

THIS Bill amends the Transport Act 1962.

Clause 1 relates to the Short Title and commencement. *Clauses 10 and 11*, relating to weight limits on roads, are to come into force on a date to be fixed by Order in Council. Part II, relating to motor spirits duty and mileage tax, is deemed to have come into force on 1 April 1969. The other clauses will come into force on the passing of the Bill.

PART I

MISCELLANEOUS AMENDMENTS OF PRINCIPAL ACT

Clause 2 inserts a definition of "design" in the principal Act in order to make it clear that the term relates to the construction of a vehicle and not to its intended use.

Clause 3: The effect of this clause is to omit the special provisions of the principal Act relating to station wagons, and to include such vehicles in the definition of "motorcar". The amendments will have effect more particularly in relation to regulations made under the Act.

Clause 4: Subclause (1) makes two amendments to the definition of "motor vehicle" in section 2 (1) of the principal Act as follows:

- (a) At present, paragraph (c) of that definition excludes a trailer that is designed exclusively as part of the armament of any of Her Majesty's Forces. The effect of the first amendment to this definition is that such a trailer will not be excluded from the definition unless it is both designed and used as part of the armament of the Forces. For example, if such a trailer is purchased by any person, it will cease to be excluded from the definition and will become subject to the Act as a motor vehicle.
- (b) The second amendment to the definition repeals paragraph (d) of the definition, which excludes from that definition a vehicle normally propelled by mechanical power while it is being temporarily towed without the use of its own power. Such a vehicle will accordingly be a motor vehicle for the purposes of the principal Act, but, by an amendment made by *clause 5* of the Bill, it will be exempt from registration and licensing.

Subclause (2) similarly repeals paragraph (c) of the definition of “trailer” in section 2 (1) of the principal Act, which excludes from that definition a motor vehicle normally propelled by mechanical power while it is being temporarily towed without the use of its own power.

Clause 5 exempts from registration and annual licensing a vehicle normally propelled by mechanical power while it is being temporarily towed without the use of its own power by a duly registered and licensed motor vehicle.

Clause 6 will enable motor vehicles owned by the proprietor of a bona fide transport museum and kept for exhibition purposes to carry “D” plates while travelling to or from an exhibition or for the purpose of a demonstration.

Clause 7 amends section 34 (2) (c) of the principal Act, under which the Commissioner of Police may apply to the Court for the cancellation of a driver’s licence on the ground that the safety of the public is unduly endangered. The effect of the amendment is to allow such an application to be made by a member of the Police authorised by the Commissioner to make it on his behalf.

Clause 8 amends section 63 of the principal Act, which includes a provision that a constable or traffic officer may forbid an incapable person to drive. If that person drives in breach of that prohibition, he commits an offence and may be arrested without warrant. The effect of this amendment is to confer a power of arrest if the driver attempts to drive in breach of such a prohibition.

Clause 9: Section 66 of the principal Act imposes a duty on the driver of a motor vehicle to stop at the signal or request of a constable or traffic officer and, on demand, disclose his name and address and, if he is not the owner, to give the name and address of the owner.

This clause re-enacts section 66 making the following two amendments:

- (a) The section is extended to all vehicles, whether motor vehicles or not;
- (b) The user of the vehicle is required to inform the traffic officer or constable whether or not he is the owner. At present, he is required to give the name and address of the owner only in cases where he is not the owner, but, although he is always required to give his own name and address, he is not required to state whether or not he is the owner.

Clause 10 repeals section 69 of the principal Act, which fixes maximum weight limits of vehicles for use on roads. It also repeals section 2 (3A) of the principal Act defining the term “oscillating axle”, which is relevant to section 69.

It is intended to replace the weight limits fixed by section 69 with limits fixed by new Heavy Motor Vehicle Regulations.

This clause is to come into force on a date to be fixed by Order in Council.

Clause 11: Subsections (2) and (3) of section 69A of the principal Act empower a traffic officer, where he finds a heavy motor vehicle to be overloaded, to off-load the surplus, subsection (2) applying where the gross weight is exceeded and subsection (3) applying where the maximum axle weights are exceeded.

This clause replaces those subsections by a new subsection (2) authorising a traffic officer to direct the surplus to be off-loaded where the gross weight or the weight on any wheel, axle, or group of axles, as fixed by regulations made under the Act, is exceeded by 20 percent or more. New Heavy Motor Vehicle Regulations being drafted will prescribe axle weights and axle spacings, and will have a built-in tolerance corresponding to the 10 cwt tolerance at present provided in subsection (3).

This clause is to come into force on a date to be fixed by Order in Council.

Clause 12 provides that in proceedings for an offence against section 69B (7) of the principal Act of failing to pay an overloading infringement fee, a statement signed by the enforcement authority, or by an officer of the enforcement authority authorised in that behalf, will, until the contrary is proved, be sufficient evidence of the non-payment of the fee.

Clause 13: Section 90B of the principal Act provides that the State Insurance General Manager shall be the nominal defendant for the purposes of Part VI of the principal Act (relating to third-party risks insurance) and shall be so described in any action brought against him under section 90E or section 90F. Those sections enable an action for damages to be brought for death or bodily injury caused by an unidentified motor vehicle or an uninsured motor vehicle.

It has recently been decided by the Court that section 90B requires the nominal defendant to be described in any such action by his official title as State Insurance General Manager and not as the nominal defendant.

This clause provides that in any such action he is to be described as "The Nominal Defendant under section 90B of the Transport Act 1962" and not by his official title.

Clause 14: Section 109 (2) of the principal Act provides that the carriage by any goods-service vehicle owned by a farmer of any goods (other than lime) owned by him and carried in connection with his farming business is a goods service requiring a goods-service licence if the weight of the vehicle and its load exceeds 6½ tons and the goods are carried against more than the distance of open Government railway specified in the subsection.

This clause abolishes the 6½ ton limit, and substitutes an exemption in cases where the goods being carried do not exceed 5 tons in weight, regardless of the gross weight of the vehicle.

Clause 15 inserts a new section 109A in the principal Act providing that a waybill must be carried on every heavy motor vehicle carrying goods on any road, and must be produced by the driver on demand by any traffic officer. The Secretary for Transport may exempt from this requirement specified vehicles or classes of vehicles or vehicles carrying specified classes of goods or vehicles operating in specified areas.

Clause 16: Section 141 of the principal Act provides for the holding of a public inquiry into the conduct of a transport service. If as a result of the inquiry the Licensing Authority is satisfied that the licensee is not carrying on the service in conformity with the licence, the Licensing Authority may revoke the licence or suspend it or amend it by altering or revoking any of its terms or conditions or by adding new terms and conditions.

This clause provides that in such a case the Licensing Authority, instead of revoking or suspending the licence, may adjourn the inquiry for up to 3 months to enable the licensee to sell or otherwise dispose of the licence.

Clause 17: Section 143 of the principal Act provides that a goods-service vehicle which is used in connection with a licensed goods service or which is a heavy motor vehicle must carry a certificate of fitness. Certain classes of vehicles are exempted from this requirement, including a motor vehicle owned by a person carrying on business as a farmer (other than as a market gardener) and used exclusively for the carriage of goods in respect of that business otherwise than under the authority of a goods-service licence.

The effect of *subclause (1)* of this clause is to exempt farmers' vehicles from the certificate of fitness requirements only in cases where the gross weight of the vehicle does not exceed $6\frac{1}{2}$ tons, and to place market gardeners in the same position as other farmers and exempt their motor vehicles from the certificate of fitness requirement except where they exceed that gross weight or are used under the authority of a goods-service licence.

The effect of *subclause (2)* of this clause is to exempt from the certificate of fitness requirements any vehicle normally propelled by mechanical power while it is being temporarily towed without the use of its own power by any motor vehicle.

Clause 18 makes 3 amendments to section 186 of the principal Act, relating to the power to make regulations, as follows:

- (a) The effect of *subclause (1)* is to authorise the making of regulations delegating to the Secretary for Transport the power to prescribe forms required for the purposes of Part VII, relating to transport licensing.
- (b) *Subclause (2)* repeals paragraph (nn) of section 186. That paragraph authorises the making of regulations prescribing matters in relation to the conduct of passengers carried in vehicles or harbour ferries used in transport services. No regulations have ever been made under that paragraph.
- (c) *Subclause (3)* authorises the making of regulations exempting from the provisions of Part II of the principal Act (relating to registration and annual licences) and of Part VII (relating to transport licensing) and of regulations under those Parts vehicles used on roads for the carriage of goods to or from ships operating a "roll on-roll off" service between New Zealand and Australia. Such exemptions may be complete or partial or conditional or unconditional, and the regulations may delegate to the Minister power to grant such exemptions.

Clause 19 provides that in proceedings for an offence proof that a weighing device had been stamped with a mark of verification under the Weights and Measures Act 1925 not earlier than 12 months before the date of the alleged offence shall be sufficient evidence, until the contrary is proved, that it was accurate on the date of the alleged offence.

Clause 20: At present, motor cars manufactured before 1 January 1919 pay a lower registration fee and annual licence fee. The effect of this clause is to extend this special provision for vintage cars to all classes of motor vehicles manufactured before that date.

PART II

MOTOR SPIRITS DUTY AND MILEAGE TAX

Clause 21 re-enacts Part VIII of the principal Act relating to motor spirits tax and mileage tax. The only changes of substance are increases in the amounts of duty on motor spirits and mileage tax that are to be paid into the National Roads Fund, and the omission of the present section 190 (relating to coloured motor spirits) which has never been brought into force. The other changes are of a drafting nature only, in order to express the provisions as to refunds in a simpler form or to exclude spent provisions.

The new Part VIII comprises *sections 187 to 191*, which provide as follows:

Section 187 provides that of the money received as Customs duties on motor spirits or under the Motor Spirits Duty Act 1961 as motor spirits duty (which are together referred to in this Part as motor spirits duty), 17.1 cents per gallon is to be paid into the National Roads Fund and 1 cent per gallon is to be paid into the Consolidated Revenue Account.

This gives effect to the announcement in the Budget that of the amount of 3.3 cents per gallon motor spirits tax which is at present payable into the Consolidated Revenue Account 2.3 cents per gallon is to be paid into the National Roads Fund, thus increasing to 17.1 cents per gallon the amount payable into that Fund. This increase is retrospective to 1 April 1969.

Section 188 re-enacts provisions appearing in the present section 188 (relating to refunds of duty on motor spirits) and in the present section 188B (relating to refunds of the additional duty of 3.3 cents per gallon on motor spirits). For convenience, the amounts of the various refunds according to the purposes for which the motor spirits were used appear in a table set out in *subsection (6)*, which also specifies how much of each refund is to be paid out of the National Roads Fund and how much is to be paid from the Consolidated Revenue Account. There are no changes in the amounts of the present refunds.

Section 189 re-enacts without change the present section 188A (relating to the misuse of aviation fuel).

Section 190 re-enacts the section 191 (relating to mileage tax), the only change being in *subsection (7)*, which increases the proportion of mileage tax that is payable into the National Roads Fund. This corresponds to the increase in the amount of motor spirits duty payable into that Fund pursuant to the new section 188.

Section 191 re-enacts without change the present section 191A (relating to the assessment of mileage tax).

Clause 22 provides for consequential repeals and a consequential amendment.

Hon. Mr Gordon

TRANSPORT AMENDMENT (NO. 2)

ANALYSIS

| Title | | |
|---|--|--|
| 1. Short Title and commencement | 15. Waybill to be carried in heavy motor vehicle | |
| PART I | | |
| MISCELLANEOUS AMENDMENTS OF PRINCIPAL ACT | 16. Public inquiry into conduct of transport service | |
| 2. Meaning of "design" | 17. Certificates of fitness or permits | |
| 3. Meaning of "motorcar" | 18. Regulations | |
| 4. Meaning of "motor vehicle" | 19. Evidence of accuracy of weighing device | |
| 5. Towed vehicle need not be registered | 20. Registration and annual licence fees | |
| 6. Dealers' plates and licences | PART II | |
| 7. Disqualification on application by local authority or insurance company or Commissioner of Police or Secretary for Transport | MOTOR SPIRITS DUTY AND MILEAGE TAX | |
| 8. Constable or traffic officer may forbid incapable person to drive | 21. Part VIII of principal Act substituted | |
| 9. On demand by constable or traffic officer, user of vehicle to stop and give name and address | PART VIII | |
| 10. Limitation of weight of motor vehicles for use on road | MOTOR SPIRITS DUTY AND MILEAGE TAX | |
| 11. Powers of traffic officers in respect of heavy motor vehicles | <i>Motor Spirits Duty</i> | |
| 12. Overloading infringements | 187. Duty on motor spirits | |
| 13. Nominal defendant | 188. Refund of motor spirits duty | |
| 14. Certain services declared to be goods services | 189. Misuse of aviation fuel | |
| | <i>Mileage Tax</i> | |
| | 190. Mileage tax on certain classes of motor vehicle | |
| | 191. Assessment of mileage tax | |
| | 22. Consequential repeals and amendment | |

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, as follows:

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1. Short Title and commencement—(1) This Act may be cited as the Transport Amendment Act (No. 2) 1969, and shall be read together with and deemed part of the Transport Act 1962* (hereinafter referred to as the principal Act).

(2) Sections 10 and 11 of this Act shall come into force on a date to be fixed by the Governor-General by Order in Council.

(3) Part II of this Act shall be deemed to have come into force on the 1st day of April 1969.

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

PART I

MISCELLANEOUS AMENDMENTS OF PRINCIPAL ACT

2. Meaning of “design”—Section 2 of the principal Act is hereby amended by inserting in subsection (1), after the definition of the term “Department”, the following definition:

“ ‘Design’, in relation to a motor vehicle, refers to the construction of the motor vehicle and not to its use or intended use; and ‘designed’ has a corresponding meaning:”.

3. Meaning of “motorcar”—(1) Section 2 of the principal Act is hereby further amended—

(a) By adding to the definition of the term “motorcar” in subsection (1) the words “and includes a motor vehicle which is designed principally for the carriage of passengers but which has rear doors and collapsible rear seats”:

*Reprinted, 1967, Vol. 3, p. 2309
Amendments: 1968, No. 148; 1969, No. 8

(b) By repealing the definitions of the terms “private station wagon” and “station wagon” in subsection (1).

5 (2) The First Schedule to the principal Act (as substituted by section 2 (4) of the Transport Amendment Act 1967) is hereby amended by omitting from clause 2 the words “or any station wagon”.

4. Meaning of “motor vehicle”—(1) Section 2 of the principal Act is hereby further amended—

10 (a) By inserting in paragraph (c) of the definition of the term “motor vehicle” in subsection (1) (as substituted by section 3 (1) of the Transport Amendment Act (No. 2) 1965), after the words “that is designed”, the words “and used”:

15 (b) By repealing paragraph (d) of the same definition.

(2) Section 2 of the principal Act is hereby further amended by repealing paragraph (c) of the definition of the term “trailer” in subsection (1).

5. Towed vehicle need not be registered—Section 7 of the principal Act is hereby amended by inserting, after subsection (4), the following subsection:

20 “(4A) Nothing in subsection (1) of this section shall apply with respect to any vehicle normally propelled by mechanical power while it is being temporarily towed without the use of its own power by a motor vehicle which complies with the requirements of that subsection.”

6. Dealers’ plates and licences—Section 22 of the principal Act is hereby amended by adding the following subsection:

30 “(7) Notwithstanding any of the foregoing provisions of this section, dealers’ plates may be used on a motor vehicle which is owned by the proprietor of a bona fide transport museum and is used solely for exhibition purposes; and the provisions of this section, except paragraph (a) of subsection (6), shall apply as if that proprietor were a dealer:

35 “Provided that this subsection shall apply only with respect to motor vehicles being used on a road to travel to or from an exhibition or for the purpose of a demonstration.”

7. Disqualification on application by local authority or insurance company or Commissioner of Police or Secretary for Transport—Section 34 of the principal Act is hereby amended by repealing paragraph (c) of subsection (2), and substituting the following paragraph: 5

“(c) The Commissioner of Police or a member of the Police authorised by him in that behalf; or”.

8. Constable or traffic officer may forbid incapable person to drive—Section 63 of the principal Act is hereby amended by inserting in subsection (2), after the words “or does”, the words “or attempts to do”. 10

9. On demand by constable or traffic officer, user of vehicle to stop and give name and address—The principal Act is hereby amended by repealing section 66, and substituting the following section: 15

“66. (1) The user of a vehicle shall stop at the request or signal of a constable in uniform or of a traffic officer wearing a distinctive cap, hat, or helmet with a badge of authority affixed thereto, and on demand give him his name and address and state whether or not he is the owner of the vehicle, and, if he is not the owner of the vehicle, shall also give the name and address of the owner. 20

“(2) Any person commits an offence who fails to comply with any provision of subsection (1) of this section, and may be arrested by any constable without warrant.” 25

10. Limitation of weight of motor vehicles for use on road—(1) Section 69 of the principal Act is hereby repealed.

(2) Section 2 of the principal Act is hereby amended by repealing subsection (3A) (as inserted by section 3 of the Transport Amendment Act 1966). 30

(3) The following enactments are hereby consequentially repealed:

(a) Sections 3 and 15 of the Transport Amendment Act 1966:

(b) Section 21 of the Transport Amendment Act 1968. 35

11. Powers of traffic officers in respect of heavy motor vehicles—Section 69A of the principal Act (as inserted by section 22 of the Transport Amendment Act 1968) is hereby amended by repealing subsections (2) and (3), and substituting the following subsection: 40

“(2) Where the weight of any heavy motor vehicle on any road is measured by or by the direction of a traffic officer, and the gross weight, or the weight on any wheel, axle, or group of axles of the motor vehicle, exceeds by 20 percent or
5 more any weight restriction prescribed by regulations made under this Act, then, unless the load on the motor vehicle is indivisible, the traffic officer shall, by direction given to the driver or person in charge of the motor vehicle,—

10 “(a) Direct that the motor vehicle be kept stopped at that place; or

“(b) Direct that the motor vehicle be removed to a place of safety approved by the traffic officer and be kept stopped at that last-mentioned place—

15 until such part of the load is removed or the load is rearranged so as to reduce the gross weight and the weight on all wheels, axles, and groups of axles of the motor vehicle to not more than the maximum so prescribed.”

12. Overloading infringements—Section 69B of the principal Act (as inserted by section 23 of the Transport Amendment Act 1968) is hereby amended by inserting, after
20 subsection (7), the following subsection:

“(7A) In proceedings for an offence against subsection (7) of this section, the production of a statement purporting to be signed by the enforcement authority, or by an officer of
25 the enforcement authority (other than a traffic officer) authorised by the enforcement authority in that behalf, shall, in the absence of proof to the contrary, be sufficient evidence of the failure by the defendant to pay the overloading-infringement fee by the due date; and every officer signing
30 any such statement shall, in the absence of proof to the contrary, be presumed to be duly authorised to sign it.”

13. Nominal defendant—Section 90B of the principal Act (as inserted by section 6 of the Transport Amendment Act 1963) is hereby amended by omitting from subsection (1) the
35 words “and shall be so described in any action brought against him under section 90E or section 90F of this Act”, and substituting the words “In any action brought against him under section 90E or section 90F of this Act, he shall be described as ‘The Nominal Defendant under section 90B of the
40 Transport Act 1962’ and not by his official title.”

14. Certain services declared to be goods services—Section 109 of the principal Act is hereby amended by omitting from subsection (2) the words “if the weight of the vehicle exceeds six and a half tons”, and substituting the words “if the weight of the load carried on the vehicle exceeds 5 tons”.

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15. Waybill to be carried in heavy motor vehicle—The principal Act is hereby further amended by inserting, after section 109, the following section:

“109A. (1) No person shall use on a road any heavy motor vehicle carrying goods of any description, unless there is carried on the vehicle a waybill, which must be produced by the driver on demand by any traffic officer:

“Provided that the Secretary may from time to time by notice in the *Gazette*, exempt from the requirements of this section any vehicles or classes of vehicles, or vehicles carrying any specified classes of goods, or vehicles or classes of vehicles operating in specified areas.

“(2) In this section, the term ‘waybill’, in relation to the carriage of goods on a heavy motor vehicle, means a document in the prescribed form specifying the goods and the owner of the goods, and specifying in sufficient detail to permit ready identification the points at which the goods were picked up or loaded and are to be set down or unloaded; and includes a consignment note specifying those matters.”

16. Public inquiry into conduct of transport service—Section 141 of the principal Act is hereby amended by adding to subsection (4) the following proviso:

“Provided that in the case of a taxicab-service licence the transfer of which is not prohibited by subsection (1) of section 138 of this Act, the Licensing Authority, in its discretion, may adjourn the inquiry for such period, not exceeding 3 months, at it thinks fit to enable the licensee to sell or otherwise dispose of the licence.”

17. Certificates of fitness or permits—(1) Section 143 of the principal Act is hereby amended by repealing paragraph (b) of subsection (2), and substituting the following paragraph:

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“(b) Any goods-service vehicle the gross weight of which does not exceed $6\frac{1}{2}$ tons, and which is owned by a person carrying on business as a farmer and is used exclusively for the carriage of goods in connection with that business otherwise than under the authority of a goods-service licence:”.

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(2) Section 143 of the principal Act is hereby further amended by inserting in subsection (2), after paragraph (d), the following paragraph:

10 “(dd) Any vehicle normally propelled by mechanical power while it is being temporarily towed without the use of its own power by any motor vehicle:”.

18. Regulations—(1) Section 186 of the principal Act is hereby amended by inserting in paragraph (a) and also in 15 paragraphs (b), (c), and (e), after the word “prescribing” wherever it occurs, the words “or authorising the Secretary to prescribe”.

(2) Section 186 of the principal Act is hereby further amended by repealing paragraph (nn) (as inserted by section 20 17 of the Transport Amendment Act 1964).

(3) Section 186 of the principal Act is hereby further amended by adding the following paragraph:

“(w) Providing for the exemption from any of the provisions of Part II of this Act or of regulations made under section 24 of this Act or of this Part of this Act or of regulations made under this section, either wholly or partially, and either unconditionally or upon or subject to such conditions as may be prescribed by or in accordance with the regulations, of goods-service vehicles used on roads for the carriage of goods to or from ships plying between ports in New Zealand and ports in Australia where those vehicles remain on board ship, loaded with the goods, throughout the voyage; and delegating to the Minister power to grant any such exemption.”

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(4) Section 17 of the Transport Amendment Act 1964 is hereby consequentially repealed.

19. Evidence of accuracy of weighing device—Section 197 40 of the principal Act is hereby amended by adding the following subsection:

“(3) In any proceedings for an offence against this Act or any regulations or bylaws made thereunder, proof that any weighing device was stamped with a mark of verification under the Weights and Measures Act 1925 not earlier than 12 months before the date of the alleged offence shall, until the contrary is proved, be sufficient evidence that it was accurate on the date of the alleged offence.” 5

20. Registration and annual licence fees—The First Schedule to the principal Act (as substituted by section 2 (4) of the Transport Amendment Act 1967) is hereby amended— 10

- (a) By omitting from clause 1 of Part I the word “motorcar”, and substituting the words “motor vehicle”:
- (b) By omitting from clause 2 of Part I the words “other motorcar”, and substituting the word “motorcar”:
- (c) By inserting in Part I, after clause 7, the words “Nothing in clauses 2 to 6 of this Part of this Schedule shall apply with respect to any motor vehicle to which clause 1 of this Part applies”: 15
- (d) By omitting from clause 3 of Part II the word “motorcar”, and substituting the words “motor vehicle”:
- (e) By adding to Part II the words “Nothing in clauses 1, 2, 4, 5, and 6 of this Part of this Schedule shall apply with respect to any motor vehicle to which clause 3 of this Part applies.” 20

PART II 25

MOTOR SPIRITS DUTY AND MILEAGE TAX

21. Part VIII of principal Act substituted—The principal Act is hereby further amended by repealing Part VIII, and substituting the following Part:

“PART VIII 30

“MOTOR SPIRITS DUTY AND MILEAGE TAX

“Motor Spirits Duty

“187. **Duty on motor spirits**—(1) In this Part of this Act the term ‘motor spirits duty’ means the money received under items 22.08.04, 27.10.22, and 38.19.34 of the Customs Tariff as Customs duties on motor spirits imported into New 35

Zealand, or entered therein for home consumption, and the money received under the Motor Spirits Duty Act 1961 as motor spirits duty.

5 “(2) Subject to subsection (4) of section 22 of the National Roads Act 1953, all money received as motor spirits duty payable on each gallon of motor spirits under the Customs Tariff or under the Motor Spirits Duty Act 1961, after deducting any refunds or drawbacks of duties made under the Customs Act 1966 or made under that Act as applied by the Motor Spirits
10 Duty Act 1961, shall be paid into the Public Account, as to 17.1 cents thereof to the credit of the National Roads Fund, and as to 1 cent thereof to the credit of the Consolidated Revenue Account.

15 “**188. Refund of motor spirits duty**—(1) In this section, unless the context otherwise requires,—

“‘Class A motor vehicle’ means any motor vehicle which is exempted from the payment of registration fees and annual licence fees by virtue of section 13 of this Act:

20 “‘Class B motor vehicle’ means any motor vehicle which is declared by Order in Council to be a vehicle of Class B for the purposes of this section:

25 “‘Class C motor vehicle’ means any motor vehicle which is declared by Order in Council to be a vehicle of Class C for the purposes of this section:

“‘Commercial vessel’ means a vessel used exclusively or principally for commercial purposes:

30 “‘Passenger-service vehicle’ means a motor vehicle designed exclusively or principally for carrying passengers and used exclusively in one or more of the following ways:

“‘(a) Under a passenger-service licence issued under Part VII of this Act:

“‘(b) As a contract vehicle:

35 “‘(c) For the carriage to or from school of school children and their teachers;—
but does not include a taxicab.

40 “(2) This section applies to motor spirits in respect of which no exemption from or refund or motor spirits duty has been granted under any other enactment and which is used for any of the following purposes:

“(a) As fuel for any motor vehicle (other than a motor vehicle used with dealers’ plates pursuant to section 22 of this Act) in respect of which an annual licence fee is not payable under section 12 of this Act; or 5

“(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) As fuel for any passenger-service vehicle; or

“(d) Otherwise than as fuel for any motor vehicle. 10

“(3) Any Order in Council made under paragraph (b) of subsection (2) of this section shall specify the classification for the purposes of this section of the motor vehicle or class of motor vehicle to which the order relates.

“(4) Persons using any motor spirits with respect to which this section applies shall, on application in the prescribed form to a Deputy Registrar, be entitled to a refund in respect of motor spirits duty to the extent specified in subsection (6) of this section. 15

“(5) All refunds under this section shall be paid out of the National Roads Fund and out of the Consolidated Revenue Account to the extent specified in subsection (6) of this section without further appropriation than this section. 20

“(6) The refunds authorised by this section shall be paid in respect of motor spirits used as described in column 1 of the table following this subsection and to the extent specified in column 2 of that table, and shall be paid from the National Roads Fund or the Consolidated Revenue Account, as the case may be, to the extent specified in column 3 or, as the case may be, column 4 of that table. The table referred to in this subsection is as follows: 25 30

TABLE OF REFUNDS OF MOTOR SPIRITS DUTY

| <i>Column 1</i> Use of Motor Spirits Entitling Refund of Motor Spirits Duty | <i>Column 2</i> Amount of Refund per Gallon of Motor Spirits | <i>Column 3</i> Amount of Refund per Gallon of Motor Spirits Payable from National Roads Fund | <i>Column 4</i> Amount of Refund per Gallon of Motor Spirits Payable from Consolidated Revenue Account |
|--|---|--|---|
| Used as fuel in Class A Motor Vehicle | c 18.1 | c 17.1 | c 1.0 |
| 5 Used as fuel in Class B Motor Vehicle | 18.1 | 17.1 | 1.0 |
| Used as fuel in Class C Motor Vehicle | 13.3 | 12.3 | 1.0 |
| 10 Used as fuel in passenger service vehicle | 3.3 | 2.3 | 1.0 |
| 15 Used as fuel in commercial vessel | 18.1 | 17.1 | 1.0 |
| Used as fuel in vessel other than a commercial vessel | 14.8 | 14.8 | Nil |
| 20 Used otherwise than as fuel in motor vehicle or in vessel | 18.1 | 17.1 | 1.0 |

“(7) Every application for a refund under this section shall be in the prescribed form, and shall be supported by such documentary evidence as the Deputy Registrar may require or as may be prescribed by regulations made under this Act.

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“(8) Every person commits an offence, and is liable to a fine not exceeding \$200, who for the purposes of obtaining a refund under this section makes any application or furnishes any information that is false in any material particular. Notwithstanding the provisions of section 259 of the Customs Act 1966, any information under the Summary Proceedings Act 1957 for an offence against this subsection may be laid by a Collector within the meaning of the Customs Act 1966 or by the Registrar or by any constable.

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“(9) Section 14 of the Summary Proceedings Act 1957 shall not apply with respect to a prosecution for an offence against subsection (8) of this section.

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“(10) 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 subsections (11) and (12) of this section, no refund under this section shall be made unless application for the refund is made within 2 years following the close of the period in respect of which it is made. Where the application is made after the expiration of 3 months from the close of the appropriate period but within 2 years after the close of that period, the amount of the refund otherwise payable shall be reduced by an amount equal to 10 percent thereof.

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“(11) Where application for a refund under this section is made after the expiration of 3 months from the close of the relevant period, whether or not it is made within 2 years after the close of that period, then, notwithstanding anything in subsection (10) of this section, a refund of the full amount may be made, in the discretion of the National Roads Board.

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“(12) Notwithstanding anything in subsection (10) of this section, a refund of duty pursuant to this section may in any special case be made before the close of any period in respect of motor spirits used within that period.

“(13) No refund of duty shall be allowed under this section unless application therefor is made in accordance with the provisions of subsection (10) or subsection (11) of this section.

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“189. Misuse of aviation fuel—(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 1966 or the Motor Spirits Duty Act 1961.

5 “(2) Any officer of the Department, duly authorised in writing for the purpose by the Secretary, 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
10 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 Secretary, permit the officer to inspect
15 the fuel tank and take a sample of its contents.

“ (3) Every person commits an offence, and is liable to a fine not exceeding \$200, who—

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

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

25 “ 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.

30 “ (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
35 were for use in aircraft.

Mileage Tax

“190. Mileage tax on certain classes of motor vehicle—

(1) This section applies to—

40 “ (a) Every motor vehicle (not being a traction engine or a vehicle designed solely or principally for the use of fire brigades for attendance at fires or a motor

vehicle classified in Class A or Class B by or pursuant to section 188 of this Act or a trolley omnibus) in respect of which an annual licence fee is payable under this Act (including a motor vehicle used with dealers' plates pursuant to section 22 of this Act), if its motive power is not wholly derived from motor spirits on which Customs duties have been imposed under items 22.08.04, 27.10.22, and 38.19.34 of the Customs Tariff, or on which motor spirits duty has been imposed under the Motor Spirits Duty Act 1961: 5

“(b) Every motor vehicle of a class which is exempt from payment of an annual licence fee under this Act and to which the Governor-General, by Order in Council, applies the provisions of this section. 15

“(2) If any motor vehicle to which this section applies is converted by mechanical adaptation (whether of a temporary or permanent nature) into any kind of motor vehicle to which this section does not apply, it shall continue to be subject to the provisions of this section until notice in the prescribed form of the conversion is received by the Registrar. 20

“(3) Within 14 days after the expiration of any quarter, or, in the case of a quarter ending with the 31st day of December, not later than the 31st day of January following, every owner of a motor vehicle to which this section applies shall lodge with a Deputy Registrar a return in the prescribed form as to the total number of miles of public highway over which the motor vehicle was used during the quarter and as to such other matters as may be prescribed. Any return made for the purposes of this subsection may relate to any number of motor vehicles, but particulars with respect to each vehicle to which the return relates shall be given separately. 25 30

“(4) There shall be paid by the owner to the Deputy Registrar by way of tax in respect of the total number of miles stated in every such return in respect of any motor vehicle an amount computed as prescribed by the Second Schedule to this Act. That amount shall become due and payable on the last day of the period within which the return is required to be lodged as aforesaid. 35

“ (5) If default is made by the owner in complying with the foregoing provisions of this section as to the lodging of any return or the payment of any tax, there shall also be paid by him to the Deputy Registrar a penalty computed
5 at the rate of 10 percent of the amount of the tax if the payment or lodgment is made within 21 clear days from the day of termination of the prescribed period, that penalty being increased by a further 5 percent of the amount of the tax for each additional term of 21 days or part thereof by
10 which the prescribed period is exceeded, but so that the penalty shall in no case exceed 50 percent of the amount of the tax.

“ (6) All money payable to a Deputy Registrar under this section shall constitute a debt due to the Crown, and may be
15 recovered accordingly in any Court of competent jurisdiction.

“ (7) Subject to the provisions of subsection (4) of section 22 of the National Roads Act 1953, all money paid or recovered under the foregoing provisions of this section shall be paid into the Public Account, and shall be credited as
20 follows:

“ (a) Ten cents of every 181 cents thereof shall be credited to the Consolidated Revenue Account; and

“ (b) The balance thereof shall be credited to the National Roads Fund.

25 “ (8) Every owner or other person who imports into New Zealand any motor vehicle to which this section applies or manufactures such a motor vehicle or converts any vehicle by mechanical adaptation (whether of a temporary or permanent nature) into such a motor vehicle shall, within 14 days
30 after the importation or manufacture or conversion, give to the Registrar notice in the prescribed form of the importation or manufacture or conversion.

“ (9) Without limiting the general power to make regulations conferred by section 199 of this Act, the Governor-
35 General may from time to time, by Order in Council, make such regulations as are necessary for the purpose of giving full effect to this section.

“ (10) Every person commits an offence, and is liable to a fine not exceeding \$200, who fails to comply with any of the
40 requirements of this section, or who makes any return or furnishes any information required by this section knowing the same to be false in any particular. Conviction for any such offence shall not relieve the offender from payment of any other penalty imposed by this section.

“(11) The Court before which any person is convicted of any such offence may, if necessary, determine the amount of tax and penalty payable by that person under this section in respect of the matters to which the offence relates, and the amount so determined, together with any penalty subsequently accruing, shall be due and payable accordingly. 5

“(12) Section 14 of the Summary Proceedings Act 1957 shall not apply with respect to a prosecution for an offence against subsection (10) of this section.

“(13) The Governor-General may from time to time, by Order in Council, exempt any class of motor vehicles from the operation of this section. 10

“**191. Assessment of mileage tax**—(1) Every person who is required to pay mileage tax in respect of any motor vehicle to which section 190 of this Act applies shall— 15

“(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 190 of this Act; and 20

“(b) Make all such accounts, waybills, and other records available for inspection by any officer duly authorised in writing in that behalf by the Secretary at any reasonable time during the period of 12 months next ensuing from the expiration of that quarter. 25

“(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 190 of this Act is less than 90 percent of the mileage recorded on the mileage recorder fitted to the motor vehicle, the Deputy Registrar may require the owner of the vehicle to produce 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 190 of this Act fails to make a return within the prescribed time, the Deputy Registrar shall 35

report the fact to the Secretary, 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 made, was used and assess the amount of mileage tax payable pursuant to that determination and any penalty thereon under subsection (5) of section 190 of this Act (any such penalty being hereinafter included in the expression 'mileage tax'). The Secretary 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.

“(4) Any person who has been assessed for mileage tax under subsection (3) of this section may object to the assessment by delivering to the Secretary 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 14 days after the date on 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 Secretary, in his discretion, accepts the same and gives notice to the objector accordingly.

“(5) The Secretary 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 Secretary, the objector may, within 6 months after the date on which notice of the disallowance is given to him by or on behalf of the Secretary, by notice in writing to the Secretary 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 Secretary.

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

- “(a) The burden of proof shall be on the objector:
- 40 “(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 thinks just, either against the Secretary or the objector:

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

“(7) Any additional amount of mileage 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— 5

“(a) Where no objection is made against the assessment, within 1 month after the date on which notice of the assessment is given to the owner: 10

“(b) Where an objection made against the assessment is not allowed by the Secretary or the assessment is reduced by the Secretary and the owner does not require the objection to be heard and determined by a Magistrate’s Court, within 1 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: 15 20

“(c) Where the owner requires his objection to be heard and determined by a Magistrate’s Court, within 1 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.” 25

22. Consequential repeals and amendment—(1) The following enactments are hereby consequentially repealed:

(a) Section 19 of the Transport Amendment Act 1964:

(b) Sections 8 to 11 of the Transport Amendment Act (No. 2) 1965: 30

(c) So much of the Sixth Schedule to the Customs Act 1966 as relates to section 191 of the Transport Act 1962:

(d) Sections 5 to 7 of the Transport Amendment Act 1967: 35

(e) Sections 24 and 25 of the Transport Amendment Act 1968.

(2) Section 22 of the National Roads Act 1953 is hereby consequentially amended by omitting from paragraph (c) of subsection (2) the words “motor spirits tax”, and substituting the words “motor spirits duty within the meaning of that Part”. 40