



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report Relating to the Sales and Use Tax

February 9, 2015

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S.* 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **March 31, 2015**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Executive Summary

This Draft Tentative Report seeks to remedy the lack of definition of the term “bus” in the New Jersey Sale and Use Tax Act¹ (the “SUT Act”).

Introduction

This project was authorized by the Commission at its June 19, 2014, meeting and results from the New Jersey Appellate Court decision *Air Brook Limousine, Inc. v. Director, Division of Taxation*,² which declined to read N.J.S. § 54:32B-8.28 *in pari materia* with the New Jersey’s Public Utility Laws³ (“Title 48”) and Motor Vehicle Laws⁴ (“Title 39”), but noted that “[g]iven the risk of impinging on the legislative function, [the court] considers it ‘better to wait for necessary corrections by those authorized to make them, or in fact, for them to remain unmade, however desirable they made be.’”⁵ The stated goal of this project is to review the law and determine whether the SUT Act’s ambiguity can be clarified.

Air Brook centered on a tax dispute involving a car service company that provides inter- and intrastate regular, charter, and special transportation. The company argued that they were not required to pay Sales and Use Tax on the purchase and repair of its sedan-style cars and limousines for the period from January 1, 1998 through December 31, 2001. Both the Tax Court and Appellate Division held that *Air Brook*’s sedans and limousines did not qualify as a “bus” as required for tax exemption pursuant to N.J.S. § 54:32B-8.28. The New Jersey Supreme Court denied certification on January 16, 2013.

Statutory Background

N.J.S. § 54:32B-8.28 reads:

Receipts from **sales of buses for public passenger transportation, including repair and replacement parts and labor therefor, to bus companies whose rates are regulated by the Interstate Commerce Commission or the Department of Transportation** or to an affiliate of said bus companies or to common or contract carriers for their use in the transportation of children to and from school are exempt from the tax imposed under the Sales and Use Tax Act. For the purposes of this section “affiliate” means a corporation whose stock is wholly owned by the regulated bus company or whose stock is wholly owned by the same persons who own all the stock of the regulated bus company. (*emphasis added*)

¹ N.J.S. § 54:32B

² 2012 WL 3166607 (App. Div. 2009), *certif. denied*, 213 N.J. 568, 65 A.3d 835 (2013).

³ N.J.S. § 48:4-1

⁴ N.J.S. § 39:1-1

⁵ *Air Brook*, *supra* note 2, at *10 (citations omitted).

The SUT Act does not define the term “bus.” Accordingly, Air Brook argued that the SUT Act exemption contained in N.J.S. § 54:32B-8.28 should be read *in pari materia* with definitions contained in Section 48:4-1 of Title 48 and Section 39:1-1 of Title 39.

Title 48 defines “autobus” as “any motor vehicle or motorbus operated over public highways or public places in this State of the transportation of passengers for hire in intrastate business, whether used in regular route, casino, charter or special bus operations, notwithstanding such motor vehicle or motorbus may be used in interstate commerce.”⁶ While the SUT bus exemption was enacted nine years prior to the Title 48 autobus definition, by pure coincidence these statutory sections were later subject to technical corrections in the same 1980 bill.

Title 39 defines “omnibus” as a “motor vehicle used for the transportation of passengers for hire, except commuter vans and vehicles used in ridesharing arrangements and school buses.”⁷

Further, in 1990, the Legislature added a SUT tax exemption for limousines⁸ which cross-references the definition of “limousine” set forth in Title 39, while leaving the bus exemption untouched and without a technical definition. Significantly, other SUT Act exemptions make specific cross-reference to definitions found in other statutes, while N.J.S. § 54:32B-8.28 does not.⁹

Analysis

All of Air Brook’s vehicles were registered with the New Jersey Department of Transportation as “omnibus” vehicles. They all bore omnibus license plates and carried certificates of registration and compliance issued by the Division of Motor Vehicles (the “DMV”). They all carried \$1.5 million in third-party public liability and property damage insurance, the amount required by the DMV for buses.

Statutes are *in pari materia*, meaning that they pertain to the same subject matter, when they relate to the same person or things, or class of persons or things.¹⁰ Characterization of the object or purpose is more important than characterization of subject matter to determine whether different statutes are closely enough related to justify interpreting on in the light of the other.¹¹

Although the term “buses” is undefined in the SUT Act, the Appellate Court declined to apply an *in pari materia* reading of the three statutes. It instead held that while the SUT Act bus exemption, Title 39 and Title 48 may all address with buses, their superficial overlap does not

⁶ N.J.S. § 48:4-1.

⁷ N.J.S. § 39:1-1.

⁸ N.J.S. § 54:32B-8.52

⁹ See N.J.S. § 54:32B-8.6 (referring to the definition of “manufactured home” in N.J.S. § 54:4-1.4); N.J.S. § 54:32B-8.8 (referring to the definition of “motor fuels” in the Motor Fuel Tax Law, N.J.S. §§ 54:39-101 to -149); N.J.S. § 54:32B-8.15 (referring to the definition of “farming enterprise” in N.J.S. § 54:32B-8.16); N.J.S. § 54:32B-8.16 (defining “farming enterprise”); N.J.S. § 54:32B-8.45 (referring to the definition of “cigarette” in the Cigarette Tax Act, N.J.S. §§ 54:40A-1 to -66); N.J.S. § 54:32B-8.52 (defining “limousine” by reference to N.J.S. § 39:3-9.5); N.J.S. § 54:32B-2(mm) (referring to the definition of “mobile communications services” in 4 U.S.C. § 124).

¹⁰ 2B Norman J. Singer, *Sutherland Statutory Construction* § 51:3 at 235-37 (7th ed.2008).

¹¹ *Id.*

mean that they are *in pari materia*. Declining to utilize the approach taken in *American Fire and Casualty Company v. New Jersey Division of Taxation*¹², wherein the Court read two seemingly conflicting tax statutes *in pari materia* as the only way to effect their clearly intended purposes, the *Air Brook* court applied a holding akin to *Yellow Cab Company v. State*,¹³ where it refused to take words away from their common use and apply “a subtle or forced construction for the purpose of either extending or limiting their operation.”¹⁴

The *Air Brook* court did, however, note that “[g]iven the risk of impinging on the legislative function, our courts consider it ‘better to wait for necessary corrections by those authorized to make them, or, in fact, for them to remain unmade, however desirable they may be.’”¹⁵

Conclusion

Though the Appellate Division declined to read the statutes *in pari materia*, and instead chose to defer to the Commissioner of taxation in interpreting the term “bus” in accordance with its ordinary meaning, it may be preferable to have a definition of this term to prevent confusion and provide greater certainty to operators. The proposed statutory language seeks to remedy this omission and will be circulated to relevant stakeholders for comment and review.

In keeping with the Appellate Division’s determination that “bus” should be construed in accordance with its ordinary and well understood meaning, the proposed statutory language included in the Appendix below defines “bus” as a vehicle that is both registered as an “omnibus” pursuant to Title 39 and is engaged in the type of scheduled, routed service that is typically provided by a bus. The proposed language is similar in structure to the definition of “limousine” contained in N.J.S. 54:32B-8.52.

¹² 189 N.J. 65 (2006).

¹³ 126 N.J.Super. 81 (App.Div.1973), *certif. denied*, 64 N.J. 498 (1974).

¹⁴ *Yellow Cab, supra*, 126 N.J.Super. at 87, quoting *Jamouneau v. Harner*, 16 N.J. 500 (1954), *cert. den.* 349 U.S. 904, 75 S.Ct. 580, 99 L. Ed. 1241 (1955); See N.J.S.A. § 1:1-1.

¹⁵ *Air Brook, supra note 1*, at *7, quoting *R.R. Comm’n v. Grand Trunk Western R. Co.*, 100 N.E. 852, 855 (Ind.1913).

Appendix

54:32B-8.28. Buses for public passenger transportation including repair and replacement parts

Receipts from sales of buses for public passenger transportation, including repair and replacement parts and labor therefor, to bus companies whose rates are regulated by the Interstate Commerce Commission or the Department of Transportation or to an affiliate of said bus companies or to common or contract carriers for their use in the transportation of children to and from school are exempt from the tax imposed under the Sales and Use Tax Act. **For purposes of this section, “bus” means a motor vehicle registered under the provisions of C.39:1-1 or registered as a bus under the laws of another state of the United States and used exclusively in the business of carrying passengers for hire conducted on a scheduled basis and a regular route.** For the purposes of this section “affiliate” means a corporation whose stock is wholly owned by the regulated bus company or whose stock is wholly owned by the same persons who own all the stock of the regulated bus company