



NEW JERSEY LAW REVISION COMMISSION

Revised Draft Final Report Relating to

N.J.S. 54:32B-8.28: Sales and Use Tax Exemption

**December 15, 2016
(070220)***

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.
Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this report or direct any related inquiries, to:

Laura C. Tharney, Executive Director
Susan G. Thatch, Counsel
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07102
973-648-4575
(Fax) 973-648-3123
Email: lct@njlrc.org
Web site: <http://www.njlrc.org>

**The Final Report from 2016 was found to be missing from the NJLRC's records, so it was recreated based on the document considered and released at the Commission's December 2016 meeting and the Minutes of that meeting.*

Executive Summary

In June 2014, the Commission authorized work on a project relating to the New Jersey Appellate Division decision in *Air Brook Limousine, Inc. v. Director, Division of Taxation*,¹ which declined to read N.J.S. 54:32B-8.28 (“the SUT Act”) *in pari materia* with the New Jersey’s Public Utility Laws² (“Title 48”) and Motor Vehicle Laws³ (“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.’”⁴

The Commission seeks to remedy the lack of definition of the term “bus” in the New Jersey Sale and Use Tax Act⁵ (the “SUT Act”) and has proposed revisions attempting to clarify this ambiguity.

Background

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.

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*)

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

¹ 2012 WL 3166607 (App. Div. 2012), *certif. denied*, 213 N.J. 568, 65 A.3d 835 (2013).

² N.J.S. § 48:4-1

³ N.J.S. § 39:1-1

⁴ *Air Brook*, *supra* note 2, at *10 (citations omitted).

⁵ N.J.S. § 54:32B

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, these statutory sections were later coincidentally 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, but leaves 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

Discussion

All of Air Brook’s vehicles were registered with the New Jersey Department of Transportation as “omnibus” vehicles pursuant to N.J.S. 39:3-19. 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 in determining whether different statutes are closely enough related to justify interpreting one in the light of the other.¹¹

Although the term “buses” is undefined in the SUT Act, the Appellate Division 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 buses, their superficial overlap does not 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 material* 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

⁶ N.J.S. § 48:4-1.

⁷ N.J.S. § 39:1-1.

⁸ N.J.S. § 54:32B-8.52 (referencing N.J.S. 39:3-195).

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.*

¹² 189 N.J. 65 (2006).

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

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, the inclusion of a statutory definition may help to prevent confusion and provide greater certainty to operators.

While the Appellate Division construed “bus” in accordance with its ordinary and well understood meaning, the proposed statutory language looks to existing statutory language in an attempt to most accurately reflect legislative intent. As a result, the proposed language defines “bus” as a vehicle that is both registered as an “omnibus” pursuant to Title 39 and is considered an autobus for purposes of Title 48.

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

a. 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.

b. For purposes of this section, “bus” means a motor vehicle that is: (1) registered under the provisions of C.39:3-19 *et seq.* or registered as a bus under the laws of another state of the United States; and (2) an “autobus” as defined in C.48:4-1.

c. 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.

COMMENT

The Appellate Division held that while the SUT Act bus exemption, Title 39, and Title 48 may all address buses, their superficial overlap does not mean that they are *in pari materia*. The *Air Brook* Court declined 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.”

The *Air Brook* Court said 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.’”

The proposed statutory language looks to existing statutory language in an attempt to most accurately reflect legislative intent. As a result, the proposed language defines “bus” as a vehicle that is both registered as an “omnibus” pursuant to Title 39 and is considered an autobus for purposes of Title 48.

For ease of access and reference, subsections were added to the statutory section.

The Commission was concerned by the reference to the federal Interstate Commerce Commission, which has ceased to exist, but since it is referred to in nearly 30 statutory sections in the New Jersey body of statutes, the reference was retained in this section and it is expected that it will be treated in the same manner as for those other statutory references.