

TRANSTRENDS

THE TRANSLAW GROUP, INC.

EDITOR: JAMES M. BURNS



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SENATE COMMITTEE PROPOSAL WOULD INCREASE HEAVY USE TAXES FOR TRUCKS



The chairman of the Senate Finance Committee is proposing a \$9 billion plan for transportation that involves an increase in the Heavy Vehicle Use Tax for many long-haul truckers.

Current law requires truck owners to pay an annual tax of \$100 plus \$22 for every 1,000 pounds in excess of 55,000 pounds gross vehicle

weight – capped at a maximum of \$550 at 75,000 pounds.

The proposal by committee Chairman Ron Wyden, D-Ore., would raise the cap to \$1,100 at 97,000 pounds. He says his proposal would not increase truck size and weight but would increase the rate paid by the heaviest trucks in states that allow up to 97,000 pounds on non-interstate highways.

Wyden says the HVUT, or HUT, portion of his transportation plan would raise approximately \$1.35 billion over 10 years. Additional money would come from other tax reforms plus a provision that would revoke or deny passports for people with delinquent taxes or child support.

The Senate Finance Committee is scheduled to mark up the proposal on Thursday, June 26. Wyden's proposal is called the Preserving America's Transit and Highways – or PATH – Act. Other Senate lawmakers recently floated a 12-cent increase in gasoline and diesel taxes as a way to boost transportation funding.

House Republicans have lined out a different plan altogether.

“Simply put, there is no way tax hikes to pay for more spending will fly in the House,” said Ways and Means Committee Chairman Dave Camp, R-Mich. “I am looking at policies that have a history of bicameral, bipartisan support, and I intend to have the Ways and Means Committee ready to act early in July.”

Camp announced a plan earlier this year that would simplify and shrink the IRS Tax Code.

NEW HAMPSHIRE FUEL TAX RATE INCREASES 4.2 CENTS JULY 1



Truckers and others will start paying a bit more in tax next week to the state of New Hampshire.

Starting Tuesday, July 1, the state's excise tax on fuel will increase for the first time since 1991. Specifically, the 18-cent-per-gallon tax rate will increase by 4.2 cents to 22.2 cents per gallon.

Despite the price bump, the state tax rate remains the lowest in New England. The next lowest is Massachusetts' 24-cent-per-gallon tax

rate.

Gov. Maggie Hassan signed a bill into law this spring authorizing the tax increase. She called it the most significant state-level investment in transportation infrastructure in more than two decades.

“This legislation is an important step toward addressing our transportation needs, keeping New Hampshire's economy moving forward by advancing critical roads and bridge projects, finishing the long-overdue expansion of I-93 and improving commutes for our workers and visitors,” Hassan stated in prepared remarks.

The tax will raise an estimated \$32 million annually – about \$588 million over 20 years – for transportation work. In addition, the state Department of Transportation will end toll collection at Exit 12 on the Everett Turnpike in Merrimack. The move will cost the state an estimated \$600,000.

The tax increase is slated to be repealed once bonds for the I-93 project are paid off in about 20 years. **And, where have we heard that sentiment in the past, think MASS PIKE.**

Additional fuel tax revenue could soon come from owners of alternative fuel vehicles. A bill headed to the governor's desk, HB1142, would extend collection of the new 22.2-cent-per-gallon rate to vehicles that use such alternative fuels as compressed natural gas, liquefied natural gas or propane.

Rep. Candace Bouchard, D-Concord, said she is pursuing the tax "for fairness." "All vehicles using the state's roads and bridges should pay the road toll – the gas tax – regardless of fuel source," Bouchard said during a previous hearing on the bill.

She noted the tax would mostly apply to commercial and government fleets making the switch to natural gas and propane.

ANOTHER TRUCKING DEFENDANT PLEADS GUILTY IN CANNED CORN HEIST



The owner of a small Memphis trucking company is the latest person to plead guilty to charges stemming from a federal indictment of a cargo theft scheme.

Earl Stanley Nunn, 59, entered a guilty plea to one felony count of theft of an interstate shipment on Monday, July 14 at the U.S. Court for the Western District of Missouri in Springfield, Mo.

According to the plea agreement, Nunn, the owner of Nu World Trucking LLC, was the leader of a cargo theft ring that used the resources of Nu World Trucking to steal cargo in various states. One codefendant in the case, Nunn's nephew Michael Lee Sherley, 49, also of Memphis, pleaded guilty to the same charge in March. Nunn's son, Roderick Nunn, entered a guilty plea in a related case in the Western District of Michigan as well.

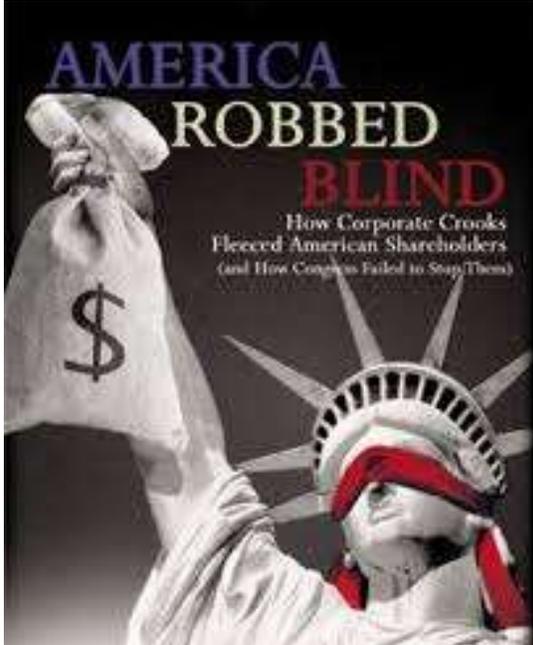
Both Sherley and the elder Nunn pleaded guilty to their roles in a May 11, 2013, theft of a shipment of canned corn from the Snappy Mart Truck Stop in West Plains, Mo. The shipment, valued at \$73,000, was bound for a food bank in Little Rock, Ark. Both men admitted that they traveled through Missouri and Indiana with the stolen cargo before being apprehended in Michigan.

Prosecutors charge that the cargo theft ring operated by driving a bobtail tractor through truck stops and service stations located on or near interstate highways, looking for parked or unattended trailers that were not coupled to road tractors. When they located a semitrailer that appeared to be

unattended, they would steal the semitrailer and the goods it contained by hooking to it and driving off. After having stolen a semitrailer and its contents, the stolen goods were usually transported to the Chicago, Ill., and Detroit, Mich., areas to be “fenced” or sold.

BILL WOULD END 'FLEECING' OF NEW JERSEY DRIVERS

A New Jersey state lawmaker is fed up with electronic ticketing schemes around the country.



Communities throughout New Jersey employ nearly 80 red-light cameras. However, the programs set up under a five-year pilot program are scheduled to sunset by the end of this year.

Assemblyman Declan O'Scanlon, R-Red Bank, recently introduced a bill that would also make sure that New Jersey drivers are no longer bothered with electronic ticketing when they drive in states that include New York, Pennsylvania and Delaware. Specifically, his bill would prohibit the state from sharing information about New Jersey drivers with other states for speed or red-light camera enforcement.

The bill is modeled after a South Dakota law that took effect earlier this month.

“These systems have proven to be error-ridden and non-effective so we shouldn't allow our motorists to be preyed upon when they are outside of our borders,” O'Scanlon said in a news release.

Referring to evidence that shows automated enforcement doesn't improve safety, he also said that continuing to share this information would make New Jersey “complicit in the scam.”

“That's exactly what these systems are – government sanctioned theft.”

COMMENTARY: TRANSLAW recently traveled through the Garden State only to be caught a second time in eight months by camera on the Garden State Turnpike. Both infractions carried \$50.00 penalties and the toll each time was \$1.50. TRANSLAW appealed the citations by producing a copy of the Fast Lane billing to show that the funds were available and the defense was asserted that New Jersey should put more money in the toll collecting technology and bring it up to speed with the camera equipment technology. They were not impressed!

BROKER'S LIABILITY FOR DAMAGED OR LOSS CLAIMS

Those who own brokerages always seem to find themselves in similar situations, asking the same question: *Do I have to carry contingent liability insurance?*

The best answer to this conundrum is quite vague. Brokers usually fall into the middle when there are damage and/or loss claims. The “Carmack Amendment”, 49 USC 14706, applies to the liability



of carriers (motor carriers and freight forwarders) for loss or damage to goods in transit. It is not applicable to brokers, as such, see e.g., Custom Cartage, Inc. v. Motorola, Inc., No. 98C5182, 1999 WL 965686 (N.D. Ill. Oct. 15, 1999). Brokers are most likely not to be held liable to the shipper unless they find themselves in certain specific situations.

BROKER HOLDS ITSELF

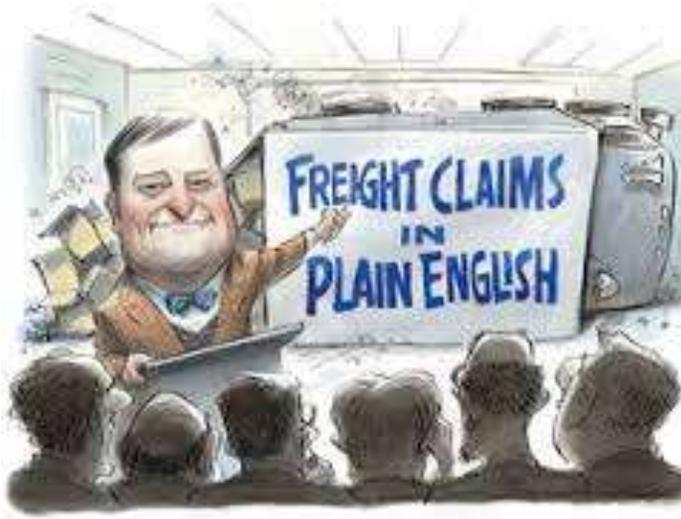
OUT AS A CARRIER: Countless numbers of brokers represent themselves through advertisements in a way that leads customers to believe the broker is a trucking company. More often than not, the brokers forget to inform their customers that they are strictly a broker of freight, not a carrier. Statements such as “we insure your cargo” are misleading and result in disappointment.

THE BROKER IS NEGLIGENT: Though the broker does not physically handle any of the goods, their behavior can certainly constitute negligence. For example, the lack of clarity in the broker’s instructions to the carrier can lead to improper practices. Tendering loads that require temperature control, timed deliveries that by agreement schedules must be met are just a few areas that can cause trouble.

THE BROKER HAS ASSUMED LIABILITY VIA AN IMPLIED CONTRACT: Most brokers would agree with one another that the best way to sell their services and to build a loyal relationship with a customer is to claim responsibility. This practice can be costly and there are ways to minimize exposure. Contingent cargo coverage is one way and another way that is not used often is to assume the cargo exposure by contract and purchase first line cargo coverage. This can be costly, however, you may find that you have better control over the claims process.

The best way to avoid being caught in a situation would be to get yourself out of the middle by bringing any necessary legal action, and to persuade your shipper to seek out the carrier for any damages or losses. Always be up front with your customers and explain how the claims processing will work under your specific relationship with the customer. It is wise to have an agreement with your shipper in order to define and memorialize your relationship.

FREIGHT CLAIMS OFFSET FREIGHT CHARGES



In the past, The Interstate Commerce Commission (ICC) included a statute that would prohibit the customer from withholding the freight payments due to a pending claim. Recently many have wondered if there is a modernized version of the abolished statute.

The old ICC Administrative Ruling essentially was more of an informal ruling, than a set-in-stone law. It was implemented back when it was illegal for carriers to give any sort of rebate/concession to a shipper.

However those provisions have no relevance to today's policies.

Nowadays there are no laws or regulations that state the bill must be paid before any claims can be considered or paid. All claims must be taken care of in accordance with the Federal Motor Carrier Safety Administration (FMCSA) regulations in 49 CFR Part 370. This regulation does not require the payment of freight charges.

However, there are certainly different circumstances where a carrier can enforce said statute. A carrier can include this in their rules tariff. If the bill of lading incorporates the carrier's rules tariff, the shipper will then be bound to the freight bill regardless of claims.

Take a look at your current practices and determine if you should have a tariff rule to cover this area and make sure that you have a bill of lading that incorporates the proper language.

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