

To: New Jersey Law Revision Commission
From: Susan Thatch
Re: N.J.S. 54:32B-8.28: Sales and Use Tax Exemption
Date: December 5, 2016

MEMORANDUM

At the October meeting, the Commission considered a Draft Final Report proposing revisions to N.J.S. 54:32B-8.28 proposing a definition of the term “bus” in a manner consistent with the Appellate Court’s decision in *Air Brook Limousine, Inc. v. Director, Division of Taxation*.¹ During the Commission’s discussion, questions arose about the treatment of other vehicles, such as charter buses and jitney services. This Memorandum considers a broader range of definitions that may be relevant to the proposed revisions; the Revised Draft Final Report submitted herewith revises the proposed modifications in accordance with this additional information for the Commission’s consideration.

Statutory Background

A. N.J.S. § 54:32B-8.28: Sales and Use Tax exemption for buses

N.J.S. 54:32B-8.28 exempts the “receipts from sales of buses for public passenger transportation, including repair and replacement parts and labor therefore. . .” from New Jersey’s Sales and Use Tax. The word “bus” is undefined within the provisions of Chapter 54. While the livery vehicles at issue in *Air Brook* were registered as “omnibuses” under the provisions of Chapter 39, the Appellate Division held that these vehicles were not buses in the ordinary sense of the word, and accordingly denied *Air Brook*’s claim for tax exemption.

B. N.J.S. Title 39: Motor Vehicles & Traffic Regulation

Title 39 provides registration and fee requirements for motor vehicles. This Chapter addresses vehicles referred to as an “omnibus” and defines it to mean a “motor vehicle used for the transportation of passengers for hire, except commuter vans and vehicles used in ridesharing arrangements and school buses.”² These vehicles are subject to the registration requirements of 39:3-19.

¹ 2012 WL 3166607 (App. Div. 2012), *certif. denied*, 213 N.J. 568 (2003).

² N.J.S. 39:1-1.

N.J.S. 39:3-19.5 provides an alternative registration provision for autocab, limousine or livery service. This section does not define autocab, but does require that an autocab operator comply with the provisions of 48:16-13, which defines autocab as “a limousine.”³

As presently structured, it seems that a car used for limousine services may be registered as either an “omnibus” or a “limousine” pursuant to the statutory language. These definitions indicate that a limousine may indeed be considered an omnibus, a fact that seems influential in the Court’s refusal to consider these statutory sections *in para material* and instead rely upon an ordinary meaning analysis.

C. N.J.S. Title 48: Public Utilities

Title 48 regulates public utilities and contains separate chapters addressing “Autobuses”⁴ and “Taxicabs, Autocabs and Jitneys.”⁵ N.J.S. 48:4-1 defines “autobus” as

any motor vehicle or motorbus operated over public highways or public places in this State for 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

However, the 48:4-1 excludes the following types of vehicles from the definition of “autobus”:

- Vehicles commonly called taxicab service unless regular service between stated termini;
- Hotel buses;
- School buses;
- Jitneys;⁷
- Autocabs, limousines or livery services as defined in 48:16-13;
- Ridesharing vehicles; and
- Any special paratransit vehicle.

³ N.J.S. 48:16-13. This “nesting” of the definitions, discussed further below, was implemented pursuant to an amendment in 2000.

⁴ N.J.S. 48:4-1 *et seq.*

⁵ N.J.S. 48:16-1 *et seq.*

⁶ N.J.S. 48:4-1.

⁷ Chapter 16 of Title 48, however, stipulates that “[t]he word “autobus” as used in this article shall mean and include any automobile or motor bus, commonly called jitney, with a carrying capacity of not more than 13 passengers, operated under municipal consent upon a route established wholly within the limits of a single municipality or with a carrying capacity of not more than 20 passengers operated under municipal consent upon a route established wholly within the limits of not more than four contiguous municipalities. . .” N.J.S. 48:16-23 – 48:16-28. The statutory language of N.J.S. 48:16-23 is identical to the statutory language *excluding* jitneys from the definition of autobus in N.J.S. 48:4-1. Thus, the term “autobus” is considered to *exclude* jitneys for purposes of Chapter 4 but to *include* jitneys for the purposes of Chapter 16.

Section 48:16-13, defines “autocab” as “a limousine” and further defines limousine as any automobile or motor car used in the business of carrying passengers for hire to provide prearranged passenger transportation at a premium fare on a dedicated, nonscheduled, charter basis that is not conducted on a regular route and with a seating capacity of no more than 14 passengers, not including the driver, provided, that such a vehicle is certified by the manufacturer of the original vehicle and the second-stage manufacturer, if applicable, to conform to all applicable Federal Motor Vehicle Safety Standards promulgated by the United States Department of Transportation pursuant to 49 CFR Part 571 (49 CFR 571.1 et seq.) and 49 CFR Part 567 (49 CFR 567.1 et seq.). . . Nothing in this article contained shall be construed to include taxicabs, hotel buses, buses employed solely in transporting school children or teachers, vehicles owned and operated directly or indirectly by businesses engaged in the practice of mortuary science when those vehicles are used exclusively for providing transportation related to the provision of funeral services, autobuses which are subject to the jurisdiction of the Department of Transportation, or interstate autobuses required by federal or State law or regulations of the Department of Transportation to carry insurance against loss from liability imposed by law on account of bodily injury or death.

Conclusion

The Appellate court declined to use the definition of either “omnibus” or “autobus” as a definition for “bus” when interpreting N.J.S. 54:32B-8.28, and instead relied upon its ordinary meaning to affirm the Tax Court’s conclusion that the cars at issue were not buses entitled to a sales and use tax exemption. Evaluating the complete definition of autobus in N.J.S. 48:4-1, it seems that the court may have reached a similar result if had chosen to read N.J.S. 48:4-1 *in para materia* with N.J.S. 54:32B-8.28. While the revisions proposed in the prior draft intended to track the court’s reasoning and result, the Commission may find it more appropriate to cross-reference the Title 48 definition of “autobus” to ensure that the legislature’s statutory carve-outs are captured and remain consistent in the future.