



# AMERICAN TRUCKING ASSOCIATIONS

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Richard D. Holcomb  
General Counsel and Senior Vice President  
for Law and Regulatory Affairs

March 3, 2008

Mr. John H. Hill  
Administrator  
Federal Motor Carrier Safety Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

**Re: Application of the American Trucking Associations for a Determination that Identification Requirements Imposed on Interstate Motor Carriers by Cook County, Illinois, Are Preempted by 49 U.S. Code 14506**

Dear Administrator Hill:

The American Trucking Associations (ATA) hereby petitions the U.S. Secretary of Transportation for a determination under Section 4306 of SAFETEA-LU (P.L. 109-59), codified at 49 U.S. Code 14506, that the identification requirements imposed by Cook County, Illinois, on interstate motor carriers under Article XIV of the County Code of Ordinances, referred to as the Cook County Wheel Tax, are preempted by federal law.

ATA is the national trade association of the American trucking industry. It is a united federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the motor carrier industry. ATA's membership includes more than 2,000 trucking companies and suppliers of motor carrier equipment and services. Directly and indirectly through our affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation.

As the national representative of the trucking industry, ATA is vitally interested in matters affecting state and federal regulatory simplification and efficiencies.

### The Ordinance

In this petition, ATA refers particularly to Sections 74-561 and 74-566, Article XIV, Cook County Code of Ordinances, which require (1) the display of a "window sticker" evidencing that a truck has been licensed and has paid fees under the Wheel Tax and (2) the painting of business vehicle identification lettering on the vehicle giving the name and address of the vehicle owner and providing a unique serial number. Copies of these provisions are enclosed. The County's requirements apply to interstate motor carriers as well as to those involved in purely intrastate commerce.

Good stuff.



### Federal Statute

Section 4306 of SAFETEA-LU, which was effective August 10, 2005, generally preempts state requirements on any kind for interstate motor carrier to carry or display any form of identification in or on a commercial motor vehicle. The only exceptions are those credentials required in connection with (1) the International Registration Plan, (2) the International Fuel Tax Agreement, (3) a state law regarding motor vehicle license plates, "or other displays that the Secretary determines are appropriate," (4) federal requirements for the transportation of hazardous materials, and (5) federal vehicle inspection standards.

### Prior FMCSA Determination

This provision of SAFETEA-LU appears clearly to preempt the identification credential requirements associated with the Cook County Wheel Tax. The Federal Motor Carrier Safety Administration (FMCSA) has already determined that a similar identification requirement imposed in association with the Oregon weight-distance tax system was preempted. See, Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination, No. FMCSA-2006-25004, 72 Fed. Reg. 9996 (Mar. 6, 2007).

In finding the Oregon cab-card credential preempted, FMCSA noted that "ensuring that the paper documents are distributed to and carried on each vehicle, and that driver has ready access to the document, could add considerably to the paperwork burden of the carrier and driver, especially if similar documents were to be required by other States." The agency further observed that "[t]he fact that enforcement could be 'more challenging' does not outweigh the burden that the additional paperwork places on carriers engaged in interstate commerce" and concluded that tax compliance identification credentials such as the Oregon cab card "are exactly the type of display Section 4306 was enacted to prohibit." Similar considerations apply in the analysis of the Cook County requirements at issue.

### Analysis

ATA submits that there is little question that the Wheel Tax window sticker and business vehicle identification provisions fall squarely within the scope of preemption found by the FMCSA in the Oregon matter. Like the Oregon cab card, the Wheel Tax identification provisions are simply credentialing aids to tax enforcement and the burden they impose on motor carriers outweighs their value as enforcement tools. FMCSA's conclusion that these types of tax identification devices are exactly the type of display that the preemption provision was designed to prohibit is equally true here.

It is not entirely clear what Congress intended by the clause in Section 4306 quoted above that excepts from the preemption "other displays that the Secretary determines are appropriate." ATA believes, however, that the placement of this language with the narrow exception for state vehicle registration licenses plates indicates Congress meant by this language to except requirements related to state vehicle registration procedures – perhaps, for example, an exception for transponders required as an alternative or in addition to the traditional metal license plate. In any event, this obscure clause should not be held to create an exception for such local tax-related requirements as those imposed by the Cook County Wheel

Mr. John H. Hill  
March 3, 2008  
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Tax. Such a determination would only open the way to the imposition of a multitude of other state and local requirements on interstate motor carriers, just the sort of situation Congress clearly intended to put a stop to.

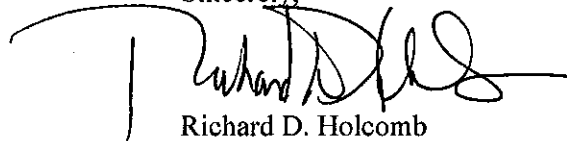
County Notified

By letter dated November 26, 2007 (enclosed), ATA has expressed its concerns to the County over the Wheel Tax window sticker and business vehicle identification lettering requirements and requested the County immediately to cease enforcing those requirements as applied to the vehicles of interstate motor carriers of any description. The County has not favored us with a response.

Conclusion

In conclusion, ATA asks that the Secretary determine that the commercial motor vehicle identification requirements as imposed by Cook County, Illinois, on interstate motor carriers as a part of the County's Wheel Tax are preempted by Section 4306 of SAFETEA-LU.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard D. Holcomb", with a long horizontal flourish extending to the right.

Richard D. Holcomb

Enclosures

cc: George Billows, ITA

Cook County, IL, Code of Ordinances, Ch. 74, Art. 14.

ARTICLE XIV. WHEEL TAX\*

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**\*Editor's note:** Ord. No. 06-O-02, adopted Dec. 21, 2005, amended in their entirety §§ 13-61--13-74, which during the 2006 recodification had been redesignated as §§ 74-551--74-565. Said ordinance further enacted similar provisions designated as §§ 13-61--13-76, which have been codified to read as herein set out. See the Code Comparative Table for the specific amendatory history for former §§ 74-551--74-565.

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Sec. 74-550. Short title.

This article shall be known and may be cited as the "Cook County Wheel Tax on Motor Vehicles Ordinance".

Sec. 74-551. Definitions.

For the purposes of this article the following terms are defined as follows:

*Bus* means a motor vehicle designed for carrying more than ten passengers and used for the transportation of persons.

*Larger passenger automobile* means a passenger automobile with a curb weight of at least 4,500 pounds, as determined by the vehicle's manufacturer. Ambulances and hearses of more than 35 horsepower are incorporated in the definition of larger passenger automobile.

*Moped* means a vehicle capable of being powered by either the muscular power of man or as a motor vehicle at the discretion of the operator. For the purpose of licensing, a moped shall be licensed as a motor vehicle.

*Motor truck* means a motor vehicle designed, used or maintained primarily for the transportation of property.

*Motor vehicle* means any vehicle including motor bicycle or motor tricycle propelled otherwise than by the muscular power of man or animal, except such as run on rails or tracks.

*Owner* includes a lessee, licensee, or bailee of a motor vehicle having the exclusive use thereof, under a lease or other similar contractual agreement for a period of not less than 30 days.

*Recreational vehicle* means every motor vehicle originally designed or permanently converted and used for living quarters or for human habitation, a motor home and not used as a commercial motor vehicle.

*Residing within the unincorporated area of Cook County* means owning, leasing, or otherwise the controlling of property or a place of business wherein motor vehicles, trailers, or semitrailers are stored, repaired, serviced, loaded or unloaded within the unincorporated area of Cook County in connection with such business.

*Semitrailer* means a vehicle designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that its load rests upon or is carried by another vehicle.

*Smaller passenger automobile* means a passenger automobile with a curb weight of less than 4,500 pounds, as determined by the vehicle's manufacturer.

*Tractor* means any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

*Trailer* means a vehicle designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

(Ord. No. 06-O-02, § 13-61, 12-21-2005.)

**Sec. 74-552. License requirement.**

It shall be unlawful for any motor vehicle owner residing within the unincorporated area of Cook County to own, possess, use, or to cause or permit any of his agents, employees, lessees, or bailees to use any motor vehicle upon the unincorporated area of Cook County, unless such vehicle be licensed as hereinafter provided.

(Ord. No. 06-O-02, § 13-62, 12-21-2005.)

**Sec. 74-553. Application.**

Any person desiring a license for any such motor vehicle or other vehicle shall file an application with the Department of Revenue (Department) in the Bureau of Finance, upon a form provided therefor, which shall set forth the name and address of the applicant, a description of the vehicle for which the license is desired, the place where the same is to be kept when not in use, the number and kinds of other vehicles kept by the said applicant at such place, and in the case of an application for a license for a motor vehicle, for what purpose the same is to be used, and such other information as may be prescribed.

(Ord. No. 06-O-02, § 13-63, 12-21-2005.)

**Sec. 74-554. Exemptions.**

All vehicles owned and operated upon the public ways of the unincorporated area of Cook County by the United States Government or any agency thereof, or by the State of Illinois or any department thereof, or by any political subdivision, public or municipal corporation of the State of Illinois or any department or other agency of such corporation, or by a nonprofit organization as defined by Section 501(c)(3) of the Internal Revenue Code, as amended, such as the American Red Cross, and all buses owned and operated by churches in conjunction with the authorized activities of said institutions under Section 3-616 of the Illinois Vehicle Code, shall be exempt from the vehicle tax. Every exempt vehicle, except those vehicles owned by the County of Cook which are used by said government agencies in confidential or undercover investigatory services or by an officer of any said agencies as the officer's official car shall have the name of the owner painted in letters at least one and one-half inches in length in a conspicuous place on the outside of each side of the vehicle; provided that in lieu of such identification every vehicle which is exempt from payment of the state motor vehicle registration fee, shall have a license plate or emblem as provided in Sections 74-556 and 74-560 herein and every vehicle owned by the United States Government or any agency thereof, which is not identified as required in this article, shall have such license plate or emblem. All license

plates or emblems for vehicles exempt from payment of the vehicle tax (a "Z" emblem) shall be furnished by the Department at no charge.  
(Ord. No. 06-O-02, § 13-64, 12-21-2005.)

**Sec. 74-555. Issuance.**

Upon the payment by the applicant of the license fee hereinafter provided, the County shall issue, or cause to be issued, a license authorizing the use of such vehicle within the unincorporated area of Cook County.  
(Ord. No. 06-O-02, § 13-65, 12-21-2005.)

**Sec. 74-556. Fees.**

Annual license fees shall be as set out in Section 32-1.

(1) A self propelled vehicle operated as a tractor and one semitrailer shall be considered as one vehicle in computing the license fees, and no additional license fee shall be required for the semitrailer so used.

(2) The owner of each vehicle who has elected to pay a mileage tax to the State of Illinois shall be required to be licensed as this article provides.

(3) A semitrailer used with any device for attaching it to a motor vehicle, a trailer, or other semitrailer, shall be licensed as a trailer.

(4) All equipment mounted on wheels for transportation and attached to any motor vehicle or leading semitrailer or trailer, using the public ways of the unincorporated area of Cook County, shall be licensed hereunder as trailers.

(5) If any such vehicle has been purchased or lawfully acquired by the applicant on or after December 1 of any current year, the fee to be paid shall be a sum equal to one-half of the annual license fee, specified in Section 32-1, as a license fee for the balance of such year. Before any applicant shall be entitled to a prorated license as provided for in this section, the applicant shall furnish an affidavit in a form satisfactory to the Department stating that the vehicle for which the license is applied for was purchased or otherwise obtained by the applicant on or after December 1 of the current year, and shall exhibit to the Department the bill of sale covering the vehicle for which the license is sought.

(Ord. No. 06-O-02, § 13-66, 12-21-2005.)

**Sec. 74-557. Persons over age 65.**

License fees for motor vehicles in Classes XSV and XLV, excluding ambulances and hearses, owned by persons 65 years of age and older shall, upon satisfactory proof of age, be charged a one-time fee of \$5.00 for the duration of the ownership of such vehicle. Such discount is limited to two cars owned by the same owner.

(Ord. No. 06-O-02, § 13-66.1, 12-21-2005.)

**Sec. 74-558. Effective dates.**

This article shall be effective on January 1, 2006, and thereafter.

(Ord. No. 06-O-02, § 13-66.2, 12-21-2005.)

**Sec. 74-559. Annual license.**

- (a) *[License to be displayed.]* Annual licenses must be displayed by July 1. Said licenses shall be valid until June 30 in the following year.
- (b) *New residents* . Within 60 days of taking up residence within the unincorporated area of Cook County, a current Cook County Vehicle License must be displayed on the owner's vehicle.
- (c) *Newly acquired vehicles* . For any new or used vehicle purchased or acquired after July 1, a valid Cook County Vehicle License must be displayed within 30 days of the date of acquisition.
- (Ord. No. 06-O-02, § 13-66.3, 12-21-2005; Ord. No. 07-O-32, 6-5-2007.)

**Sec. 74-560. Motor bicycle plate.**

- (a) The Department shall deliver to the holder of a license for a motor bicycle, motor tricycle, or trailer, a metal plate or other license emblem which shall bear the word "Cook County" and a number identical with the number of the license, the name of the class to which such vehicle belongs, and the year for which such license is issued.
- (b) When such metal plate or other license emblem is delivered to the holder of a license for a motor bicycle, motor tricycle, or trailer, it shall be the duty of such licensee to affix such plate or other license emblem in a conspicuous position so that the plate or other license emblem can be easily seen upon the rear end of such motor bicycle, motor tricycle, or trailer.
- (Ord. No. 06-O-02, § 13-67, 12-21-2005.)

**Sec. 74-561. Window sticker.**

- (a) Except for those who receive a sticker under Section 74-557 of this article, the Department shall deliver to the holder of any license for any automobile, motor truck, motor ambulance or hearse, motor coach or motor bus, a sticker license emblem, which shall bear the words "Vehicle Sticker" and "County of Cook" and the numerals designating the year for which such license is issued, the name of the County Board President, and a number identical with the number of such license.
- (b) Such sticker emblem shall be affixed, in accordance with the instructions printed thereon which are made a part hereof, and without the use of supplemental adhesives, at the lower right-hand corner of the inside of the glass portion of the windshield of such motor vehicle, approximately one inch from the right-hand lower sections of the frame of such windshield.
- (c) The Department shall change annually the predominant background colors of such sticker emblems.
- (d) The Department shall deliver to the holder of any license issued under Section 74-557 of this article a sticker license emblem which shall bear the words "Vehicle Sticker" and "County of Cook", the name of the County Board President, and a number identical with the number of such license.
- (Ord. No. 06-O-02, § 13-68, 12-21-2005.)

**Sec. 74-562. Removal upon sale.**

- (a) Immediately upon the sale of any vehicle licensed under this article, when such sale is made prior to the date of expiration of such license, the vendor shall remove the license tag, plate, transparent sticker, or other license emblem from the vehicle so sold.

(b) Except where a vehicle has been regularly transferred as hereinafter provided in Section 74-564 herein, it shall be the duty of the purchaser of any used automobile or other vehicle to remove and deliver to the vendor or the vendor's agent immediately any license tag, plate, transparent sticker or other license emblem which may be attached to such vehicle at the time of the purchase thereof, when the vendor of such vehicle may have refused, failed or omitted to detach from such vehicle as hereinafter required. It shall be unlawful for any such purchaser to use, sell or offer sale such used automobile or other vehicle without first having removed all license tags, plates, transparent stickers or other license emblems.

(Ord. No. 06-O-02, § 13-69, 12-21-2005.)

**Sec. 74-563. Unlawful use on another vehicle.**

It shall be unlawful for any person to affix or cause to be affixed any license tag, plate, transparent sticker or other license emblem to any automobile or other vehicle other than the vehicle to which such license tag, plate, transparent sticker or other license emblem was intended to be affixed at the time of the issuance thereof by the Department.

(Ord. No. 06-O-02, § 13-70, 12-21-2005.)

**Sec. 74-564. Transfer.**

(a) Whenever the owner of any vehicle licensed under this article, before the expiration of such license, sells or otherwise disposes of such vehicle, and thereafter acquires another vehicle and desires to transfer the vehicle license originally issued for the vehicle disposed of to such newly-acquired vehicle, such owner shall immediately make application to the Department for a transfer of said vehicle license to the newly-purchased vehicle. Said application shall state the name and address of the licensee and the name and address of the purchaser of said vehicle, together with a description of the newly-purchased vehicle. Upon surrender of the original license and transparent sticker or vehicle tag in case a metal tag has been issued, or upon proof that the transparent sticker or plate has been destroyed, the Department shall transfer said license to apply to the new-acquired vehicle upon payment of the proper license fee of \$10.00, provided, that the Department shall not transfer any license where the transparent sticker emblem issued under said license is defaced or mutilated so as to prevent identification of the emblem. It shall be unlawful for any person to displace a transparent sticker emblem on any vehicle other than the vehicle for which the emblem was originally issued, without first transferring the license to such other vehicle, as provided herein.

(b) The owner of any vehicle licensed under this article shall promptly notify the Department whenever the transparent sticker emblem issued under such license is lost, stolen or destroyed. A duplicate transparent sticker may be purchased from the Department for \$20.00.

(Ord. No. 06-O-02, § 13-71, 12-21-2005.)

**Sec. 74-565. Dealer license.**

(a) If any manufacturer or dealer of any of the motor vehicles mentioned in this article shall make application to the Department and shall state that the manufacturer or dealer is a manufacturer operating a plant for the construction of motor vehicles within the unincorporated area of Cook County, or a dealer in such motor vehicles with a salesroom

**Sec. 74-567. Right to inspect.**

The Cook County Sheriff's Police are hereby authorized to issue citations to any vehicle registered to an address in unincorporated Cook County on the public way in unincorporated Cook County that is not displaying a Cook County vehicle sticker and furthermore, officers of the Cook County Sheriff's Police shall have the authority to enter the following places for purposes of ascertaining whether vehicles parked therein are in compliance with this article and issue citations accordingly:

- (1) Any parking lot that is open to pedestrian traffic.

Nothing in this section authorizes any officer to force, break, or remove any lock or door in order to gain entry to any of the foregoing places.

(Ord. No. 06-O-02, § 13-74, 12-21-2005.)

**Sec. 74-568. Penalty for ordinance violation.**

(a) *Late fee.* Any owner as defined in Section 74-551 or 74-552 who purchases a license after July 1 or other due date as defined in Section 74-559(b) or (c) shall pay a late fee penalty equal to the amount due for the license fee but not less than \$25.00 per license, whichever is more. Persons over age 65, physically handicapped individuals, or disabled veterans shall not be charged more than \$25.00 for a late fee.

(b) *Back dated fees.* Any person or motor vehicle as defined in Section 74-551 or 74-552 who did not purchase a license after the effective date may be required to pay the entire amount of fees due for each of the prior three years that the fee had not been paid.

(c) *Penalty for failure to properly display sticker or unlawful use of sticker on another vehicle.* Any owner, driver or motor vehicle in violation of these provisions requiring a license shall be fined not less than \$75.00 per offense nor more than \$150.00 per offense.

(d) *Purchase of a license after the due date.* Purchase of a license after the due date shall not result in an order of compliance discharge or a finding of not guilty by any court or administrative hearing and penalties and fines, contained herein shall be mandatory.

(Ord. No. 06-O-02, § 13-75, 12-21-2005; Ord. No. 07-O-32, 6-5-2007.)

**Sec. 74-569. Penalty for unlawful removal.**

(a) Except as otherwise provided in 50 ILCS 45/80, any person who shall take, destroy, remove, or obliterate any license tag, plate or emblem provided for in this article, without the consent of the owner of the vehicle, shall be fined not less than \$200.00 nor more than \$500.00 for each offense. Every such wrongful destruction, obliteration or removal of such license tag, plate or emblem from any vehicle shall be considered a separate offense.

(b) Except as otherwise provided in 50 ILCS 45/80, any person violating any provision of this article where the penalty is not otherwise herein provided for shall be fined not less than \$50.00 dollars nor more than \$200.00 for each offense. A separate and distinct offense shall be considered as committed for each and every day any wagon or vehicle is used upon the public ways of the unincorporated area of Cook County without having procured a license and without having complied with the provisions of this article.

(c) The license and fees herein imposed is in addition to all other taxes imposed by the Government of the United States, the State of Illinois or by any unit of local government.

(Ord. No. 06-O-02, § 13-76, 12-21-2005.)



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★  
Richard D. Holcomb  
General Counsel and Senior Vice President  
for Law and Regulatory Affairs

November 26, 2007

Ms. Donna L. Dunnings  
Chief Financial Officer  
Cook County  
Room 500  
118 N. Clark Street  
Chicago, IL 60602-1304

Dear Ms. Dunnings:

The American Trucking Associations ("ATA") is writing you concerning the enforcement on interstate motor carriers by Cook County of the motor carrier identification requirements imposed under Article XIV of the County Code of Ordinances, referred to as the Wheel Tax. In particular, we refer to Sections 74-561 and 74-566 which require (1) the display of a "window sticker" evidencing that a truck has been licensed and has paid fees under the Wheel Tax and (2) the painting of business vehicle identification lettering on the vehicle identifying the name and address of the vehicle owner and providing a unique serial number. We believe these requirements to be preempted by federal law.

Section 4306 of the federal highway reauthorization bill, SAFETEA-LU (P.L. 109-59), which was effective August 10, 2005, and is codified at 49 U.S.C. section 14506, generally preempts state requirements of any kind for interstate motor carriers to carry or display any form of identification in or on a commercial motor vehicle. The only exceptions are those credentials required in connection with (1) the International Registration Plan, (2) the International Fuel Tax Agreement, (3) a state law regarding motor vehicle license plates, (4) federal requirements for the transportation of hazardous materials, and (5) federal vehicle inspection standards.

This provision of SAFETEA-LU appears clearly to preempt the identification credential requirements associated with the Wheel Tax. A similar identification requirement imposed in association with the Oregon weight-distance tax system was determined to be preempted earlier this year by the United States Department of Transportation. See, Identification of Vehicles: Oregon Department of Transportation Tax Credentials Petition for Determination, No. FMCSA-2006-25004, 72 Fed. Reg. 9996 (Mar. 6, 2007) (copy enclosed).

Good stuff.



The US DOT, in finding the Oregon cab-card credential preempted, noted that "ensuring that the paper documents are distributed to and carried on each vehicle, and that driver has ready access to the document, could add considerably to the paperwork burden of the carrier and driver, especially if similar documents were to be required by other States." The agency further observed that "[t]he fact that enforcement could be 'more challenging' does not outweigh the burden that the additional paperwork places on carriers engaged in interstate commerce" and concluded that tax compliance identification credentials such as the Oregon cab card "are exactly the type of display Section 4306 was enacted to prohibit."

We submit that there is little question that the Wheel Tax window sticker and business vehicle identification provisions would fall squarely within the scope of preemption found by the US DOT in the Oregon matter. Like the Oregon cab card, the Wheel Tax identification provisions are simply identification credentialing aids to tax enforcement and the burden they impose on motor carriers outweighs their value as enforcement tools. The agency's conclusion that these types of tax identification devices are exactly the type of display that the preemption provision was designed to prohibit is equally true here.

The American Trucking Associations (ATA) asks the County to recognize that the window sticker (§ 74-561) and the business vehicle identification lettering (§ 74-566) fall within the preemptive scope of the federal law and to immediately cease enforcing those requirements as applied to the vehicles of interstate motor carriers of any description. We would appreciate confirmation of your intent to do so within 60 days. Absent voluntary rescission of the requirements, ATA reserves the right to take other appropriate legal action.

Sincerely,



Richard D. Holcomb  
General Counsel & Senior Vice President  
Law & Regulatory Affairs

Enclosure

cc: George Billows, ITA