

# Legislative Analysis

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## **MOTOR CARRIER FUEL TAX ACT: JOINT AND SEVERAL LIABILITY**

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**House Bill 5920 as enacted**  
**Public Act 472 of 2004**  
**Sponsor: Rep. Jerry O. Kooiman**  
**Committee: Transportation**

**Complete to 6-19-06**

### **A SUMMARY OF HOUSE BILL 5920 AS ENACTED 12-29-04**

The bill, enacted as Public Act 472 of 2004, would amend Section 8 of the Motor Carrier Fuel Tax Act (Public Act 119 of 1980) regarding the tax liability of lessors and lessees of qualified commercial motor vehicles. Under current law, if the party (lessor or lessee) primarily responsible for the payment of tax fails, in whole or in part, to satisfy the tax liability, both the lessor and lessee are jointly and severally liable for taxes due under the act. Under provisions of the bill, these provisions would apply to lessors and lessees for taxes incurred before April 1, 2005 and after April 1, 2007. The bill establishes somewhat different provisions for the two-year trial period, April 1, 2005 to April 1, 2007.

The bill indicates that for tax liabilities incurred between April 1, 2005 and April 1, 2007, *"if a lease agreement identifies a party responsible for the payment of taxes, the nonresponsible party under the lease shall obtain a copy of the responsible party's valid international fuel tax agreement registration and keep the copy on file."* Although not stated specifically, compliance with this requirement appears to relieve the nonresponsible party from liability for taxes due under the act. The bill indicates that if the lease agreement does not identify the responsible party for the payment of taxes, or if the nonresponsible party does not obtain the responsible party's valid international motor fuel tax agreement registration, then both parties would be jointly and severally liable for payment of the tax due.

### **FISCAL IMPACT:**

The "as introduced" bill would have eliminated the joint and several liability provisions of current law. The Michigan Department of Treasury had expressed concern that striking those provisions could make it more difficult to collect taxes due under the Motor Carrier Fuel Tax Act, particularly when a party with primary responsibility for the tax under terms of a lease agreement fails to discharge its tax liability. A reduction in taxes collected under the act would result in a reduction in state-restricted Michigan Transportation Fund revenue. However, the enacted version of the bill would eliminate joint and several liability under limited circumstances and for a limited period of time. The amount of revenue reduction, if any, which might be result from the bill can not be reasonably estimated.

### **BACKGROUND INFORMATION:**

As stated in its title, the Motor Carrier Fuel Tax Act prescribes a privilege tax for use of state public roads and highways by motor carriers. The tax is 15 cents per gallon of motor fuel

consumed on public roads and highways in Michigan. If a motor carrier does not maintain records of actual fuel consumption, the act provides for a presumptive consumption rate of one gallon consumed for each four miles traveled. Revenue from this tax is credited to the Michigan Transportation Fund (MTF). The Motor Carrier Fuel Tax Act generated \$30 million for the Michigan Transportation Fund in FY 2004-05.

The act defines “motor carrier” as a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and at least one other state or Canadian province, or is a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and who is licensed under the International Fuel Tax Agreement (IFTA). This definition excludes motor carriers who operate only in Michigan; effectively the tax applies only to interstate motor carriers who pay motor carrier fuel use taxes under IFTA.<sup>1</sup>

A motor carrier operating a commercial motor vehicle as defined by the act is not always the vehicle owner. The motor carrier operator can be a lessee, leasing the vehicle from a leasing company (the lessor). Section 8 of the act indicates that a qualified commercial motor vehicle leased to a motor carrier is subject to the act to the same extent and in the same manner as commercial motor vehicles owned by a motor carrier.

The act also indicates that a lessor may be considered a motor carrier (and thus responsible for payment of taxes under the act) if it supplies or pays for the motor fuel used in the vehicle, or if the rental or other charges include the cost of motor fuel. In addition, the act excuses a lessee motor carrier from filing reports for a qualified commercial motor vehicle if the vehicle is leased from a lessor who is a motor carrier and the lease agreement requires the lessor to pay the cost of motor fuel and motor fuel taxes.

In effect, the Motor Carrier Fuel Tax Act allows parties to a commercial motor vehicle lease agreement to determine which party, lessor or lessee, has primary tax liability under the act. In practice, lease terms often establish whether the lessor or lessee is primarily responsible for reporting and payment of taxes due under the act. Full service leasing companies may provide IFTA tax reporting on behalf of lessees based on trip and fuel purchase information submitted by the lessee. In other cases, the operator/lessee assumes full responsibility for IFTA tax filing.

Nonetheless, Section 8, Subsection 4 of the act, as first enacted in 1980, established joint and several liability for taxes due under the act, regardless of which party is primarily responsible for tax compliance under terms of the lease. Thus if a lessee were responsible for compliance with the act under terms of a lease agreement, but failed to discharge its tax liability, the Michigan Department of Treasury could try to collect from the lessor. Conversely, if a lessor

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<sup>1</sup> The International Fuel Tax Agreement provides for reciprocal collection of motor carrier fuel taxes among the forty-eight contiguous states and nine Canadian provinces. As a result, Michigan’s Motor Carrier Fuel Tax is collected by both the Michigan Department of Treasury and other states and Canadian provinces through IFTA tax filings. Beginning April 1, 2003, the effective date of a 2002 amendment to the act (Public Act 667 of 2002), Michigan-only (intrastate) motor carriers are exempt from the Motor Carrier Fuel Tax Act, and instead pay motor fuel taxes exclusively “at the pump” under the Motor Fuel Tax Act (PA 403 of 2000).

failed to discharge its tax liability under the act, even if obligated to do so under terms of a lease agreement, the department could attempt to collect from the lessee.<sup>2</sup>

Note that Section 8, including the joint and several liability provisions, has been a part of the Motor Carrier Fuel Tax Act since the statute was first enacted in 1980, prior to the adoption of ITFA. Section 2a of the act indicates that if provisions of the act conflict with provisions of the international fuel tax agreement, provisions of IFTA shall apply.

The IFTA Articles of Agreement address fuel use tax liability under rental or lease agreements for commercial motor vehicles. Article V, Section R510.100 indicates that for short-term rentals (29 days or less) the lessor is responsible for fuel tax reporting and payment if the lessor is regularly engaged in the business of leasing, or renting vehicles without drivers, except when each of two additional conditions is met: the lessor has written rental contract which designates the lessee as the party responsible for reporting and paying the fuel use tax; and the lessor has a copy of the lessee's IFTA fuel tax license which is valid for the term of the rental.

Article V, Section R530.200 provides that in the case of a carrier using independent contractors under long-term leases (30 days or more), the lessor and lessee have the option of designating which party will report and pay fuel use tax. This section indicates that in the absence of a written agreement or contract, or if the document is silent regarding responsibility for reporting and paying fuel use tax, the lessee is responsible for reporting and paying fuel use tax. The section also states that if the lessee (carrier) through a written agreement or contract assumes responsibility for reporting and paying fuel use taxes, the base jurisdiction for IFTA reporting is the lessee's base jurisdiction, regardless of the jurisdiction in which the lessor had registered the qualified motor vehicle.

Article V, Section R340 of the IFTA Articles of Agreement allows a base jurisdiction to require, for cause, a licensee to post a bond. The section indicates that bonds may be required for failure to file timely returns or to remit taxes, or when an audit indicates problems severe enough that, in the opinion of the base jurisdiction, a bond is required to protect the interests of the member jurisdictions. A similar provision is contained in Section 5 of the Motor Carrier Fuel Tax Act.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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<sup>2</sup> Section 6a of the Motor Carrier Fuel Tax Act indicates that taxes due other IFTA-member jurisdictions by persons licensed by the Michigan Department of Treasury under IFTA are considered a tax imposed by the act. As a result, the joint and several liability standard would appear to also apply to taxes collected by Michigan for other states and Canadian provinces through IFTA filings of Michigan licensed motor carriers.