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BILL ANALYSIS

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House Bill 5920 (Substitute S-2 as passed by the Senate)
Sponsor: Representative Jerry O. Kooiman
House Committee: Transportation
Senate Committee: Transportation

Date Completed: 12-9-04

RATIONALE

Michigan is a party to the International Fuel Tax Agreement (IFTA), which provides for reciprocal collection of motor carrier fuel taxes among the continental United States, Canadian provinces, and Mexican states. Michigan's Motor Carrier Fuel Tax Act imposes a tax on motor fuel for the use of public roads and highways in Michigan by motor carriers, and contains licensure and reporting requirements for motor carriers. The Act provides that the lessor and lessee of a vehicle used by a motor carrier are jointly and severally (individually) liable for fuel tax reporting requirements and payment of the tax due. Therefore, while contracts between lessors and lessees often provide that the lessee will pay the tax, the State may collect the tax from the lessor if the lessee fails to comply. Some people believe that this practice is unfair, and that the lessee should be held responsible for payment of the tax.

(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 Michigan and at least one other state or Canadian province, or a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in Michigan and who is licensed under IFTA. A "qualified commercial motor vehicle" is a motor vehicle that meets certain criteria regarding axles and/or weight.)

CONTENT

The bill would amend the Motor Carrier Fuel Tax Act to suspend for two years the joint and several liability of the

lessor and lessee of a qualified commercial motor vehicle, under certain circumstances.

Section 8 provides that every qualified commercial motor vehicle leased to a motor carrier is subject to the Act, to the same extent and in the same manner as vehicles owned by a motor carrier. This section governs the primary liability under the Act of lessors and lessees of qualified commercial motor vehicles. If a lessor or lessee primarily liable fails, in whole or in part, to discharge his or her liability, the failing party and the other lessor or lessee party to the transaction must be jointly and severally responsible and liable for compliance with the Act and for the payment of the tax due. The aggregate of taxes collected from a lessor and lessee by the State under the Act, however, may not exceed the total amount of taxes due and costs and penalties imposed.

Under the bill, the provision for joint and several liability would apply to tax liabilities incurred before April 1, 2005, and tax liabilities incurred after April 1, 2007. For tax liabilities arising between those dates, if a lease agreement identified a party responsible for the payment of taxes, the nonresponsible party under the lease would have to obtain a copy of the responsible party's valid International Fuel Tax Agreement registration and keep the copy on file. If the nonresponsible party did not do so, and the responsible party failed entirely or partly to discharge his or her liability, then both parties would be jointly and severally responsible and liable for

compliance with the Act and the payment of tax due.

If the lease agreement did not identify the party responsible for payment of motor carrier fuel taxes, then both parties would be jointly and severally liable for compliance and payment. As currently provided, the aggregate of taxes collected from a lessor and lessee by the State could not exceed the total amount of taxes due and costs and penalties imposed.

MCL 207.218

BACKGROUND

Under the International Fuel Tax Agreement, each interstate motor carrier must maintain detailed trip reports, including documentation of the highways used and miles traveled by jurisdiction, and fuel purchase records by jurisdiction, including original invoices from vendors. The motor carrier then must file a report with the base jurisdiction's department of treasury and pay a tax according to each member jurisdiction's fuel tax statute. The base jurisdiction collects the tax and distributes it to the member jurisdictions accordingly.

In Michigan, a lessor may be considered a motor carrier with respect to vehicles leased to others, if the lessor supplies or pays for the fuel or bills rental or other charges calculated to include the cost of fuel. A lessee motor carrier may exclude a vehicle leased from others from the Act's reporting and liability requirements, if that vehicle has been leased from a lessor who is a motor carrier and the lease agreement provides for the lessor to pay the cost of motor fuel and motor fuel taxes.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The current joint and several liability provisions under the Act impose an unfair tax burden on a lessor when a lessee fails to pay the taxes due. Lessors should not be held responsible for taxes owed by lessees who are not under the lessors' supervision or control.

Furthermore, the joint and several liability provisions put Michigan companies at a disadvantage in the marketplace. Large competitors, such as Ryder, that are based in other states but do business in Michigan, are not subject to this liability. Of the 48 states that participate in IFTA, 41 do not have joint and several liability provisions related to payment of the fuel tax.

Supporting Argument

The result of the joint and several liability provision is that one private company is responsible for collecting taxes from another private company. The duty of collecting taxes, however, rightfully lies with the government.

Response: There are several other taxes, such as the sales tax, that the State relies on private companies to collect from others.

Opposing Argument

Although the tax is imposed according to the amount of fuel consumed, it actually is a use tax, rather than a consumption tax, for the wear and tear commercial vehicles impose on the roads. Since both the lessor and the lessee benefit from the lessee's use of the roads, both parties should remain liable for payment of the tax.

Opposing Argument

Lessees generally are compliant with the tax provisions of the Act. Apparently, the Department of Treasury has had to enforce the joint and several liability provision against a lessor only once, when a lessee went bankrupt. The bill appears to be a solution in search of a problem.

Response: For a company that leases vehicles to others, particularly a small leasing company, a single act of noncompliance by one lessee can translate into a significant financial burden.

Opposing Argument

The State of Michigan is responsible for distributing to other IFTA member jurisdictions the taxes that Michigan-based motor carriers owe for miles driven in those jurisdictions, regardless of whether the motor carriers remit their taxes to the State in compliance with the Act. If the State were unable to collect the money from the lessor when the lessee did not pay the tax, it would have to use other resources to pay the member jurisdictions. Although it is rare that the lessee does not pay, even small

revenue losses can add up and place a burden on the State.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill could result in a reduction in State motor carrier fuel tax receipts if suspending the joint and several liability clause in Section 8 made it more difficult for the Department of Treasury to collect taxes due. This reduction would decrease deposits in the Michigan Transportation Fund. Data are not readily available to determine the possible revenue reduction.

Fiscal Analyst: Craig Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.