

HOUSE BILL No. 6728

November 19, 2008, Introduced by Rep. Opsommer and referred to the Committee on Transportation.

A bill to amend 2000 PA 403, entitled
"Motor fuel tax act,"
by amending section 8 (MCL 207.1008), as amended by 2006 PA 268.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8. (1) Subject to the exemptions provided for in this
2 act, tax is imposed on motor fuel imported into or sold, delivered,
3 or used in this state at the following rates:

4 (a) Except as otherwise provided in subdivision (c), 19 cents
5 per gallon on gasoline.

6 (b) Except as otherwise provided in subdivision (d), 15 cents
7 per gallon on diesel fuel.

8 (c) Subject to subsections (10) and (11), 12 cents per gallon
9 on gasoline that is at least 70% ethanol. Under this subdivision,

1 blenders of ethanol and gasoline outside of the bulk transfer
2 terminal system shall obtain a blender's license and are subject to
3 the blender reporting requirements under this act. A licensed
4 supplier who blends ethanol and gasoline shall also obtain a
5 blender's license.

6 (d) Subject to subsections (10) and (11), 12 cents per gallon
7 on diesel fuel that contains at least 5% biodiesel. Under this
8 subdivision, blenders of biodiesel and diesel fuel outside of the
9 bulk transfer terminal system are required to obtain a blender's
10 license and are subject to the blender reporting requirements under
11 this act. A licensed supplier who blends biodiesel and diesel fuel
12 shall also obtain a blender's license.

13 (2) Tax shall not be imposed under this section on motor fuel
14 that is in the bulk transfer/terminal system.

15 (3) The collection, payment, and remittance of the tax imposed
16 by this section shall be accomplished in the manner and at the time
17 provided for in this act.

18 (4) Tax is also imposed at the rate described in subsection
19 (1) on net gallons of motor fuel, including transmix, lost or
20 unaccounted for, at each terminal in this state. The tax shall be
21 measured annually and shall apply to the net gallons of motor fuel
22 lost or unaccounted for that are in excess of 1/2 of 1% of all net
23 gallons of fuel removed from the terminal across the rack or in
24 bulk.

25 (5) It is the intent of this act:

26 (a) To require persons who operate a motor vehicle on the
27 public roads or highways of this state to pay for the privilege of

1 using those roads or highways.

2 (b) To impose on suppliers a requirement to collect and remit
3 the tax imposed by this act at the time of removal of motor fuel
4 unless otherwise specifically provided in this act.

5 (c) To allow persons who pay the tax imposed by this act and
6 who use the fuel for a nontaxable purpose to seek a refund or claim
7 a deduction as provided in this act.

8 (d) That the tax imposed by this act be collected and paid at
9 those times, in the manner, and by those persons specified in this
10 act.

11 **(E) THAT THE TAX IMPOSED ON MOTOR FUEL BY THIS ACT IS**
12 **REPRESENTATIVE OF THE TYPE OF ENERGY-CONSUMPTION-BASED TAXATION**
13 **THAT IS THE PRIMARY METHOD THAT THE LEGISLATURE TAXES PERSONS FOR**
14 **DRIVING MOTOR VEHICLES ON THE PUBLIC ROADS AND HIGHWAYS OF THIS**
15 **STATE. THE LEGISLATURE FURTHER FINDS AND DETERMINES THAT ANY FORM**
16 **OF TAXATION THAT IS BASED ON THE TRACKING OF VEHICLES IS NOT AN**
17 **ACCEPTABLE METHOD OF TAXATION AND WILL NOT BE EMPLOYED BY THIS**
18 **STATE.**

19 (6) Bills of lading and invoices shall identify the blended
20 product and the correct fuel product code. The motor fuel tax rate
21 for each product shall be listed separately on each invoice.
22 Licensees shall report the correct fuel product code for the
23 blended product as required by the department. When fuel is blended
24 below the terminal rack, new bills of lading and invoices shall be
25 generated and submitted to the department upon request. All bills
26 of lading and invoices shall meet the requirements provided under
27 this act.

1 (7) Notwithstanding any other provision of this act, all
2 facilities in this state that produce motor fuel and distribute the
3 fuel from a rack for purposes of this act are a terminal and shall
4 obtain a terminal operator license and shall comply with all
5 terminal operator reporting requirements under this act. All
6 position holders in these facilities shall be licensed as a
7 supplier and shall comply with all supplier requirements under this
8 act.

9 (8) If the tax on gasoline that contains at least 70% ethanol
10 or diesel fuel that contains at least 5% biodiesel held in storage
11 outside of the bulk transfer/terminal system on ~~the effective date~~
12 ~~of the amendatory act that added this subsection~~ **SEPTEMBER 1, 2006**
13 has previously been paid at the rates imposed by subsection (1)(a)
14 and (b), the person who paid the tax may claim a refund for the
15 difference between the rates imposed by subsection (1)(a) and (b)
16 and the rates imposed by subsection (1)(c) and (d). All of the
17 following shall apply to a refund claimed under this subsection:

18 (a) The refund shall be claimed on a form prescribed by the
19 department.

20 (b) The refund shall apply only to:

21 (i) Previously taxed gasoline containing at least 70% ethanol
22 or diesel fuel containing at least 5% biodiesel in excess of 3,000
23 gallons held in storage by an end user.

24 (ii) Previously taxed gasoline containing at least 70% ethanol
25 or diesel fuel containing at least 5% biodiesel held for sale that
26 is in excess of dead storage.

27 (9) A refund request shall be filed within 60 days after ~~the~~

~~last day of the month in which the amendatory act that added this subsection took effect~~ **SEPTEMBER 30, 2006**. A taxpayer shall provide documentation that the department requires in order to verify the request for refund. A person who may claim a refund under subsection (8) shall do all of the following to claim the refund:

(a) Not later than 12 a.m. on ~~the effective date of the amendatory act that added this subsection~~ **SEPTEMBER 1, 2006**, take an inventory of gasoline containing at least 70% ethanol or undyed diesel fuel containing at least 5% biodiesel.

(b) Deduct 3,000 gallons if the person claiming the refund is an end user.

(c) Deduct the number of gallons in dead storage if the gasoline containing at least 70% ethanol or the undyed diesel fuel containing at least 5% biodiesel is held for subsequent sale.

(10) Beginning on ~~the effective date of the amendatory act that added this subsection~~ **SEPTEMBER 1, 2006**, the state treasurer shall annually determine, for the 12-month period ending May 1 and for any additional times that the treasurer may determine, the difference between the amount of motor fuel tax collected and the amount of motor fuel tax that would have been collected but for the differential rates on gasoline pursuant to subsection (1)(c) and biodiesel pursuant to subsection (1)(d). Subsection (1)(c) and (d) is no longer effective the earlier of 10 years after ~~the effective date of the amendatory act that added this subsection~~ **SEPTEMBER 1, 2006** or the first day of the first month that is not less than 90 days after the state treasurer certifies that the total cumulative rate differential from ~~the effective date of this amendatory act~~

1 **SEPTEMBER 1, 2006** is greater than \$2,500,000.00.

2 (11) The legislature shall annually appropriate to the
3 Michigan transportation fund created in 1951 PA 51, MCL 247.651 to
4 247.675, the amount determined as the rate differential certified
5 by the state treasurer for the 12-month period ending on May 1 of
6 the calendar year in which the fiscal year begins. Subsection
7 (1)(c) and (d) shall not be effective beginning January of any
8 fiscal year for which the appropriation required under this
9 subsection has not been made by the first day of the fiscal year.

10 (12) As used in this section:

11 (a) "Biodiesel" means a fuel composed of mono-alkyl esters of
12 long chain fatty acids derived from vegetable oils or animal fats
13 and, in accordance with standards specified by the American society
14 for testing and materials, designated B100 and meeting the
15 requirements of D-6751, as approved by the department of
16 agriculture.

17 (b) "Ethanol" means denatured fuel ethanol that is suitable
18 for use in a spark-ignition engine when mixed with gasoline so long
19 as the mixture meets the American society for testing and materials
20 D-5798 specifications.