

Legislative Analysis



AMENDMENTS TO MOTOR FUEL TAX ACT AND MOTOR CARRIER FUEL TAX ACT

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House Bills 5298 & 5299
Sponsor: Rep. Rick Olson
Committee: Transportation

Complete to 2-7-12

A REVISED SUMMARY OF HOUSE BILLS 5298 & 5299 AS INTRODUCED 1-26-12

House Bill 5298 would amend several sections of the Motor Fuel Tax Act (2000 PA 403). Among other things, the bill would increase the tax on gasoline from the current rate of 19 cents per gallon to 28.3 cents per gallon on the effective date of the bill's enactment. The bill would also increase the tax on diesel motor fuel, and on liquefied petroleum gas used to propel motor vehicles, from the current rate of 15 cents per gallon to 28.3 cents per gallon on the effective date of the bill's enactment. Under provisions of the bill, the Michigan Department of Treasury would adjust these tax rates each quarter based on a calculation of 10.1% of the average wholesale price of unleaded regular gasoline. The bill would establish a floor tax rate of 28.3 cents per gallon and ceiling tax rate of 40 cents per gallon. The bill would limit the fluctuation in the tax rate between the floor and ceiling tax rates by limiting the quarterly changes in tax rates to no more than one cent per gallon up or down as compared to the previous year's calendar quarter.

The bill would create a contingent state supplemental fuel excise tax in the event that the federal motor fuel taxes are repealed or not reauthorized.

The bill would eliminate a number of exemptions from the tax provided for under current law, including exemptions for state agencies, political subdivisions of the state, educational institutions, and community action agencies.

The bill would eliminate a 1.5% deduction currently allowed suppliers "to allow for the cost of remitting the tax."

House Bill 5299 would amend Section 2 of the Motor Carrier Fuel Tax Act (1980 PA 119) to increase the tax rate on diesel motor fuel from the current rate of 15 cents per gallon. The bill would make the rate the same as the diesel tax rate established under the Motor Fuel Tax Act in House Bill 5298. House Bill 5299 is tie-barred to House Bill 5298, although House Bill 5298 is not tie-barred to House Bill 5299.

The Motor Carrier Fuel Tax Act imposes a tax on diesel fuel consumed in Michigan by motor carriers, effectively interstate truckers, even if they do not purchase fuel in Michigan.

Detailed Analysis of House Bill 5298

Changes to Motor Fuel Tax Rates

(Section 8 regarding tax rate; Sections 2, 5, & 6, definitions; Sections 151 & 152 regarding liquefied petroleum gas)

The Motor Fuel Tax Act imposes a tax on motor fuels used in motor vehicles on the public roads and highways of the state. The current tax rate is 19 cents per gallon for gasoline and 15 cents per gallon for diesel motor fuel and liquefied petroleum gas used to propel motor vehicles. The tax rate for gasoline was last increased in 1997 when 1997 PA 83 increased the rate from 15 cents per gallon. The current 15 cent per gallon tax rate for diesel motor fuel and liquefied petroleum gas used to propel motor vehicles has been in effect since 1984.

House Bill 5298 would amend Section 8 of the Motor Fuel Tax Act to establish a *motor fuel* tax rate of 28.3 cents per gallon for both gasoline and diesel motor fuel on the effective date of the bill's enactment. This would effectively increase the tax on gasoline by 9.3 cents per gallon, from the current rate of 19 cents per gallon, and increase the tax rate on diesel motor fuel by 13.3 cents per gallon from the current tax rate of 15 cents per gallon. The bill would also amend Section 152 of the act to make a similar change with regard to liquefied petroleum gas used to propel motor vehicles, i.e. to increase the rate from 15 cents per gallon to 28.3 cents per gallon.

While the initial motor fuel tax rate on the effective date of the bill's enactment would be 28.3 cents per gallon, the bill provides for the quarterly adjustment of the rate, within an established *rate floor* and *rate ceiling*, based on the *average wholesale price* of gasoline. Under provisions of the bill (Section 8), the Michigan Department of Treasury would adjust the motor fuel tax rates each quarter based on a calculation of the *average wholesale price* of unleaded regular gasoline times the *applicable percentage* of 10.1%. The *wholesale price* is defined as the price per gallon of unleaded gasoline charged by a licensed supplier at the time of removal from a terminal across the rack – exclusive of state sales tax, federal excise tax, environmental fees, or state motor fuel taxes.

The bill would establish a *rate floor* of 28.3 cents per gallon, the rate in effect on the bill's enactment, and *rate ceiling* of 40 cents per gallon. The bill would limit the fluctuation in the motor fuel tax rate between the *rate floor* and *rate ceiling* by limiting the quarterly changes to no more than one-cent per gallon up or down as compared to the previous year's calendar quarter.

The *rate floor* of 28.3 cents per gallon is based on *wholesale price* of approximately \$2.80 per gallon, which equates to a pump price for gasoline of approximately \$3.353 per gallon under current law, including federal excise tax, state sales tax, and the current 19 cent per gallon tax rate. All things being equal, substituting the rate floor of 28.3 cents per gallon for the current tax rate of 19 cents per gallon would simply increase the pump price for gasoline by 9.3 cents per gallon – from \$3.353 cents per gallon to \$3.446 cents per gallon.

The *rate ceiling* of 40.0 cents per gallon is based on *wholesale price* of approximately \$3.96 per gallon, which equates to a pump price for gasoline of approximately \$4.583 per

gallon under current law, including federal excise tax, state sales tax, and the current 19 cent per gallon tax rate. All things being equal, substituting the rate ceiling of 40.0 cents per gallon for the current tax rate of 19 cents per gallon would simply increase the pump price for gasoline by 21.0 cents per gallon – from \$4.583 cents per gallon to \$4.793 cents per gallon.

After the first year of implementation, the bill would limit the quarterly change in the motor fuel tax rate to no more than one-cent per gallon up or down as compared to the previous year's calendar quarter. As a result, it would take no less than 9 years to go from the *floor rate* to the *ceiling rate*, and a steady increase in the wholesale price from \$2.80 per gallon to \$3.96 per gallon over that period.

The bill would also amend Sections 151 and 152 to make the motor fuel tax rate applicable to liquefied petroleum gas when used as a motor fuel.

The italicized terms, *applicable percentage*, *average wholesale price*, *rate ceiling*, *rate floor*, and *wholesale price* are defined terms in the bill, in amended Sections 2, 5, and 6.

Treatment of Inventory and Supplemental Excise Tax (Section 10)

The bill would amend Section 10, by striking Subsections 1 through 5 of current law dealing with treatment of fuel inventory in the event of an increase in the fuel tax. We do not understand how those provisions currently operate, nor can we describe what impact the elimination of those subsections would have.

The bill would add new language to Section 10 to create a supplemental state motor fuel excise tax. This supplemental tax would be imposed only if the current federal motor fuel excise taxes were reduced or eliminated. If the federal excise tax were repealed or not reauthorized, the supplemental state motor fuel tax would be imposed at the same rate as the current federal tax, 18.4 cents per gallon. If the federal tax were reduced, the supplemental tax would be set at the difference between the current federal tax rate and the reduced tax rate.

The current federal 18.4 cent per gallon excise tax is credited to the Federal Highway Trust Fund, the source of funding for federal-aid highway programs. As reported in the August 1, 2011, edition of *Politico* "Gas tax may be next battle on Hill," some anti-tax groups have advocated repealing the federal motor fuel excise taxes.

Elimination of 1.5% Collection Credit (Section 14)

House Bill 5298 would strike language in Section 14 that currently provides for a 1.5% deduction for the supplier/taxpayer in computing the tax on gasoline.

The point of taxation under current law is generally when motor fuel is transferred across a rack at a terminal, typically by transfer onto a wholesalers's transport truck. The person responsible for the tax is the last owner of the fuel prior to transfer, defined in the Motor Fuel Tax Act as the "supplier." [The point of taxation would *not* change under provisions of the bill.]

Section 14 of the act currently allows suppliers, in computing the tax, to deduct 1.5% of the quantity of gasoline "to allow for the cost of collection." Current law also requires suppliers, when selling gasoline to retailers, to credit the retailers with one-third of this computed tax deduction.

To illustrate the operation of the deduction in practice: if 8,800 gallons of fuel were loaded from the terminal rack to a tanker truck, the supplier/taxpayer could deduct 1.5%, or 132 gallons, from tax calculation under current law. Given 4.3 billion gallons of annual gasoline consumption in the state, we estimate that this tax collection credit equates to approximately \$12.4 million annually.

Note that House Bill 5298 does *not* change the collection point for the motor fuel taxes. The tax would still be imposed on suppliers at the time fuel is transferred across a rack at a terminal. For additional information on the collection of motor fuel taxes, see House Fiscal Agency memo *Motor Fuel Taxes, Sales Tax on Motor Fuels, and Tax Collection* <http://www.house.mi.gov/hfa/PDFs/tax%20rates%20and%20collection%202012%20update.pdf>

Leaded Racing Fuel/Aviation Fuel Used for Racing (Sections 3, 4, 30, 39, & 94)

Under current law leaded racing fuel is not considered either motor fuel or gasoline for purposes of taxation. The bill would strike references to leaded racing fuel in the definition of "gasoline" in Sec. 3(f), and "motor fuel" in Sec. 4(d) of current law, and would strike the definition of "leaded racing fuel" in Sec. 4(b). The bill would also strike references to leaded racing fuel in Section 39, which provides for a tax refund for non-highway uses of previously taxed motor fuel.

Leaded racing fuel was specifically exempted from the motor fuel tax by 2006 amendment to the act, House Bill 5959 of the 2005-2006 Legislative Session, enacted as 2006 PA 277. The bill would also strike references in Sections 30 and 94 to aviation fuel used as racing fuel. Those references had been added by House Bill 5583 of the 2007-2008 Legislative Session, enacted as 2008 PA 26, to specifically exempt aviation fuel used as racing fuel from motor fuel taxes.

House Bill 5298, by striking the references to leaded racing fuel, and aviation fuel used as racing fuel, appears to make leaded racing fuel subject to the motor fuel excise tax. It is not clear whether purchasers of leaded racing fuel and aviation fuel used as racing fuel could still seek a refund under Sections 39 and 48 to the extent that these fuels were consumed for a non-highway purpose.

Elimination of Certain Tax Exemptions

(Sections 30, 32, 34, 39, & 48; Enacting Section 1, Repealers of Sections 33, 35, 38, 41, 42, 45, & 47)

Section 30 of current law provides an exemption from the motor fuel tax for certain governmental entities and educational institutions. House Bill 5298 would eliminate the current tax exemption for motor fuel sold directly to state government and political

subdivisions of the state, or for school buses owned, operated, or leased by schools, colleges, or universities.

Section 32 provides for the refund of the tax if paid on fuel used for certain non-taxable purposes specified in Sections 33 to 47. Section 48 provides a process for obtaining such refunds. In addition to the amendments related to racing fuel and aviation fuel used for racing, described above, House Bill 5298, enacting Section 1, would repeal several sections which currently provide for refunds for certain currently non-taxable uses:

Section 33 currently provides for end-user refunds for motor fuel used for non-highway purposes. This section appears to be almost identical to Section 39 and the repeal of Section 33 will therefore have no effect.

Section 35 currently provides for the refund for tax paid on motor fuel sold tax-free to schools, colleges, or universities for school buses owned, operated, or leased by those institutions.

Section 38 currently allows a retail diesel dealer to claim a refund for tax paid on sales of undyed diesel motor fuel in amounts of 100 gallons or less when sold tax-free for a nontaxable purpose.

Section 41 currently provides for the refund for tax paid on motor fuel purchased by community action agencies which are not part of a political subdivision of this state. There are 30 community action agencies in Michigan which provide services to low income individuals and families, including senior services and early childhood development programs (Head Start). The reference in this section to Section 5, of Article II, of the Motor Carrier Act appears to be an anachronism.

Section 42 currently provides for the refund for tax paid on diesel motor fuel used in a passenger vehicle with a capacity of 10 or more passengers under a certificate of authority issued by the Michigan Department of Transportation.

Section 45 currently provides for refunds to the end user operating a motor vehicle with a common fuel supply tank that both propels the vehicle and operates certain attached equipment such as pumps, sprayers, mixers, and refrigerators.

Section 47 currently indicates that a refund for tax paid under the act must be filed within 18 months of the date of purchase. This section appears to be duplicated in Section 48: therefore, the repeal of Section 47 would have no impact.

Other Repealers in Enacting Section 1 (Section 147)

In addition to the repealing sections in current law which had provided for refunds for certain non-taxable uses of motor fuel, Enacting Section 2 of House Bill 5298 would also repeal **Section 147** from current law which had required a report on the dyed diesel program. The report was required 18 months after the effective date of 2000 PA 2000, i.e. 18 months after April 1, 2001.

Dyed Fuel (Section 122)

The Motor Fuel Tax Act, when recodified in 2000, provided for the use of dyed diesel fuel for tax exempt purposes. Untaxed diesel fuel is dyed to prevent its use in motor vehicles. Section 122 of current law prohibits the operation of motor vehicles using dyed, i.e. untaxed, diesel fuel. Section 122 also makes certain exceptions from this prohibition. House Bill 5298 would eliminate the exemption for motor vehicles of state government and political subdivisions of the state, and for passenger vehicles with a capacity of 10 or more passengers under a certificate of authority issued by the Michigan Department of Transportation

Differential Tax Rates for Alternative Fuels - Eliminate

House Bill 5298 would also strike language in Section 8(1)(c), Section 8(1)(d), and Section 8, subsections 8 through 12, which had established a lower tax rate for ethanol and bio-diesel. This lower tax rate had been in effect for the for the 8-month period ending May 1, 2007 and is no longer operative.

The lower tax rate for alternative fuels had been established in by 2006 PA 268 (Senate Bill 1074 of the 2005-2006 Legislative Session.) Senate Bill 1074 had required the Legislature to annually appropriate to the Michigan Transportation Fund (MTF) – presumably from the state General Fund – an amount equal to the revenue lost because of the reduced tax rate. If the appropriation were not made, the bill provided that the reduced tax rate would end beginning the first calendar year after the fiscal year in which the appropriation should have been made.

On December 12, 2007, the State Treasurer certified that the revenue loss to the MTF as a result of the reduced tax rates for ethanol and biodiesel, for the 8-month period ending May 1, 2007, was \$776,827. However, this amount was not appropriated to the MTF by the end of calendar year 2007. Because the appropriation was not made by the end of 2007, the alternative fuel tax rate reduction program ended on January 1, 2008. See House Fiscal Agency analysis of Senate Bill 1074 of the 2005-2006 Legislative Session, and House Bill 5662 of the 2007-2008 Legislative Session.

Distribution of Motor Fuel Tax Revenue (Sections 143, 162, 163)

Section 130 of the act currently provides for the seizure and sale of fuel inventory for certain violations of the act and directs that the proceeds from such sales be credited to the Michigan Transportation Fund. In addition, **Section 143** directs that all money collected under the act, with certain defined exceptions, be credited to the Michigan Transportation Fund. The bill would strike both references to "Michigan Transportation Fund" and replace them with "Commercial Corridor Fund." The Commercial Corridor Fund would be created under provisions of a companion bill, House Bill 5303.

The bill would also amend **Section 161** and **Section 163** of the act which provided for appropriation of funds ("advances") to pay bonds issued by the Mackinac Bridge Authority and the repayment of those advances. Current law indicates that funds that lapse from the appropriation shall lapse to the Michigan Transportation Fund and the repayment of the advances shall be credited to the Michigan Transportation Fund. The

bill would strike both references to "Michigan Transportation Fund" and replace them with "Commercial Corridor Fund." As noted earlier, the Commercial Corridor Fund would be created under House Bill 5303.

For additional information on these Mackinac Bridge Authority advances see:
<http://www.house.mi.gov/hfa/PDFs/mackinac.pdf>

FISCAL IMPACT:

The intent of the Motor Fuel Tax Act is *"to require persons who operate a motor vehicle on the public roads or highways of this state to pay for the privilege of using those roads and highways."* Revenue from the taxes imposed by the act is dedicated for transportation purposes in Article IX, Section 9 of the 1963 Michigan Constitution.

The current 19 cent per gallon gasoline excise tax is estimated to generate \$844 million in FY 2011-12; the 15-cent per gallon diesel motor fuel tax rate is expected to generate \$124 million.

We estimate that the increase in the gasoline excise tax from 19 cents per gallon to the floor rate of 28.3 cents per gallon would generate an additional \$413.1 million in the first year, assuming current rates of gasoline consumption.

We estimate that the increase in the diesel fuel excise tax from 15 cents per gallon to the floor rate of 28.3 cents per gallon would generate an additional \$109.9 million in the first year, assuming current rates of diesel fuel consumption.

We estimate that the elimination of the 1.5% supplier collection deduction would provide an additional \$12.4 million in state transportation revenue.

We have not yet estimated the impact of the elimination of tax exemptions for motor fuel used by state government and political subdivisions of the state, or for school buses owned, operated, or leased by schools, colleges, or universities.

Under current law, Motor Fuel Tax revenue, as well as revenue from vehicle registration taxes, is credited to the Michigan Transportation Fund (MTF). MTF revenue is then distributed in accordance with the provisions of Public Act 51 of 1951 to other state transportation funds and program accounts and to local road agencies (county road commissions, cities and villages). House Bill 5298 would change the distribution of Motor Fuel Tax revenue from the MTF to the Commercial Corridor Fund created under provisions of a companion bill, House Bill 5303. We have not yet determined how the proposed distribution would affect the state and local units of government.

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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.