

# Legislative Analysis



## AMENDMENTS TO MOTOR FUEL TAX ACT, MOTOR CARRIER FUEL TAX ACT

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

House Bill 5477 (Substitute H-2)

House Bill 5493 (Substitute H-1)

Sponsor: Rep. Rob VerHuelen

Committee: Transportation and Infrastructure

Complete to 5-12-14

## SUMMARY OF HOUSE BILLS 5477 (H-2) AND 5493 (H-1) AS PASSED BY THE HOUSE 5-8-14

House Bill 5477 (H-2) would amend the Motor Fuel Tax Act to change the current fixed tax rate of 19 cents per gallon for gasoline to a per gallon rate that could change annually based on a calculation made the Michigan Department of Treasury. The gasoline tax rate proposed in the bill would be determined by the Michigan Department of Treasury by multiplying the *average wholesale gasoline price* – a defined term in the bill – by 6%. The computed rate would be rounded up to the nearest 1/10 of 1 cent.

The bill would make a similar change to the motor fuel tax on diesel motor fuel. The bill would change the current fixed tax rate of 15 cents per gallon to a per gallon tax that could change annually. The diesel tax rate proposed in the bill would be determined by the Michigan Department of Treasury by multiplying the *average wholesale diesel fuel price* – a defined term in the bill – by 6%. The computed rate would be rounded up to the nearest 1/10 of 1 cent.

The bill would limit annual rate increases for both the tax on gasoline and the tax on diesel motor fuel to the lesser of one cent, 5 percent, or the *inflation rate*, as defined in the bill.

The tax rate changes proposed in the bill would take effect beginning October 1, 2014, and would be recomputed each year thereafter. Prior to October 1, 2014, the current 19 cent per gallon rate for gasoline and 15 cent per gallon rate for diesel motor fuel would remain in effect through September 30, 2014. [The effective date is a little unclear; the rates proposed in the bill would take effect on October 1, 2014, but Enacting Section 1 indicates that the bill's effective date is the first day of the first calendar quarter following the date of enactment.]

Note that the tax rates, even though computed as a percentage of the wholesale price of unleaded regular gasoline and undyed No.2 ultra-low sulfur diesel fuel would still be excise taxes assessed on a per gallon basis. The Michigan Department of Treasury would convert the percentage to a cents per gallon tax rate. The tax rate would change only annually under specific conditions described in the bill.

The bill would establish a rate floor and a rate ceiling. The rate floor, as defined in the bill, would be equal to 19 cents per gallon on the effective date of the bill's enactment. The rate ceiling would be 32.5 cents per gallon. By defining the rate floor as 19 cents per gallon for both gasoline and diesel motor fuel, the bill would effectively increase the diesel tax rate by four cents – from 15 cents to 19 cents per gallon – on the effective date of the bill's enactment.

The bill would also amend Section 152 which currently imposes a motor fuel tax on liquefied petroleum gas when used as a motor fuel. The bill would change the tax rate to the same rate determined for diesel motor fuel.

House Bill 5477 would strike language that had established differential tax rates for alternative fuels and would strike a definition of "heating oil" – a defined term which is not actually used anywhere in the act.

House Bill 5493 (H-1) would amend the Motor Carrier Tax Act to make the diesel tax rates in that act consistent with the rates established in House Bill 5493. The bill would also strike language that had established differential tax rates for alternative fuels. The bill also adds new language barring refund claims filed more than 18 months after the date of motor fuel purchase. Bill 5493 is tie-barred to House Bill 5477.

## **DEFINITIONS**

### **House Bill 5477 (H-2) provides the following definitions:**

"Average wholesale diesel price" is defined in the bill to mean "the statewide average wholesale price of diesel fuel as determined by the department based upon a 12-month rolling average of the diesel fuel wholesale price." The bill indicates that "for each rate in effect for a particular *year* under Section 8(1)(d), the 12-month rolling average period ends on the last day of the month that is 3 months prior to the date in which the rate is determined under Section 8(1)(d) is in effect."

"Wholesale diesel fuel price" is defined as "the price per gallon of undyed No.2 ultra-low sulfur diesel fuel charged by a licensed supplier to a purchaser at the time of removal from a terminal across the rack, as determined by the department." Under the bill's definition, other state and federal motor fuel taxes, sales taxes, and regulatory fees would be excluded from the wholesale gasoline price tax base.

"Average wholesale gasoline price" is defined in the bill to mean "the statewide average wholesale price of gasoline as determined by the department based upon a 12-month rolling average of the gasoline wholesale price." The bill indicates that "for each rate in effect for a particular *year* under Section 8(1)(c), the 12-month rolling average period ends on the last day of the month that is 3 months prior to the date in which the rate is determined under Section 8(1)(d) is in effect."

"Wholesale gasoline price" is defined as "the price per gallon of unleaded regular gasoline charged by a licensed supplier to a purchaser at the time of removal from a terminal across the rack, as determined by the department." Under the bill's definition,

other state and federal motor fuel taxes, sales taxes, and regulatory fees would be excluded from the wholesale gasoline price tax base.

## **BACKGROUND INFORMATION:**

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.

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 Motor Carrier Fuel Tax Act imposes a tax equivalent to the Motor Fuel Tax Act for interstate motor carriers who may, or may not, actually purchase fuel in Michigan.

## **FISCAL IMPACT:**

The current 19 cent per gallon gasoline excise tax is estimated to generate \$812.5 million in FY 2013-14; the current 15-cent per gallon diesel motor fuel tax rate is expected to generate \$130.0 million.

House Bill 5477 (H-2) amendments to the Motor Fuel Tax Act, working together with House Bill 5493 (H-1), which would amend Motor Carrier Tax Act to mirrored the diesel rates established in House Bill 5477 (H-2), would likely generate additional state restricted transportation revenue, primarily by increasing the tax rate on diesel motor fuel from 15 cents per gallon to the rate floor of 19 cents per gallon on the effective date of the bill's enactment. Changing the tax rate for diesel from 15 cents per gallon to 19 cents per gallon would equate to a revenue increase of approximately \$35.0 million in the first year of the change.

The additional revenue impact of the bills, beyond the increase in diesel tax rates noted above, would depend on two variables: motor fuel consumption and the average wholesale price of gasoline and diesel motor fuel at the time the rates were calculated.

Consumption of gasoline in Michigan peaked in 2002 and has been in decline each year since 2002 – an average annual decline of 1.2% each year.

The price of gasoline is relatively volatile – between January 2009 and March 2014, the retail price of gasoline ranged from a high of \$4.04 per gallon to a low of \$1.91 per gallon. The statewide average pump price of regular unleaded gasoline for March 2014 was \$3.72 cents per gallon. While the pump price is not the same as the average wholesale price, the changes in pump price reflect changes in underlying wholesale prices of motor fuels.

As noted above, the bill would limit the annual increases in both gasoline and diesel tax rates to the lesser of one cent, 5 percent, or the *inflation rate*, as defined in the bill.

The 5% limit on annual tax rate increases would limit the tax rate increase in the first year of implementation to .95 cents (.19 x 1.05%) - a bit less than one cent per gallon. This would equate to an increase in revenue from the motor fuel tax on *gasoline*, at current rates of consumption, to \$40.6 million. Note this figure represents the *maximum* increase associated with the bill's impact on gasoline taxes in the first year of implementation. The actual increase, if any, would also be limited by the inflation rate as defined in the bill, and the calculation of 6% of the average wholesale price of gasoline.

If the computed tax rate for gasoline increased by the rate limit of 5% per year, the rate would hit the ceiling rate of 32.5 cents per gallon 11 years after implementation.

Under current law, revenue from the Motor Fuel Tax Act and Motor Carrier Fuel Tax Act 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).

The bills would not change the point of collection for motor fuel taxes. Although the retail price of fuel purchased "at the pump" currently includes federal and state excise taxes, those taxes are not actually collected from the retailer, (i.e. service station); they are collected from fuel suppliers as defined in the Motor Fuel Tax Act. The change in the tax collection point from the retailer to the supplier was effected for the gasoline tax by Public Act 225 of 1992, and the change in collection point for diesel taxes was made in part by PA 225 of 1992, and completed through Public Act 668 of 2002.

For a description of how motor fuel taxes are collected in Michigan, please see: [Motor Fuel Taxes, Sales Tax on Motor Fuels, and Tax Collection](#) [25K] February 6, 2012, Prepared by William E. Hamilton. This memo provides background information on taxes imposed on motor fuels in Michigan.

Fiscal Analyst: William E. Hamilton

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