

Act No. 475
Public Acts of 2014
Approved by the Governor
January 10, 2015
Filed with the Secretary of State
January 12, 2015
EFFECTIVE DATE: Pending

**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Rep. VerHeulen

ENROLLED HOUSE BILL No. 5493

AN ACT to amend 1980 PA 119, entitled “An act to prescribe a privilege tax for the use of public roads and highways of this state by motor carriers by imposing a specific tax upon the use of motor fuel within this state; to provide for certain credits against this tax and certain mechanisms for paying, collecting, and enforcing this tax; to provide for the licensing of motor carriers and for exemptions from licensure; to require the keeping and providing for the examination of certain reports; to provide review procedures for the assessment of the tax and revocation of a license; to impose certain duties upon and confer certain powers to certain state departments and agencies; to prescribe certain penalties for the violation of this act; and to make appropriations,” by amending sections 1, 2, 2a, 4, 5, 6a, 8, 9, and 10 (MCL 207.211, 207.212, 207.212a, 207.214, 207.215, 207.216a, 207.218, 207.219, and 207.220), section 1 as amended by 2002 PA 667, sections 2 and 4 as amended by 2006 PA 346, section 2a as added by 1994 PA 353, section 5 as amended and section 6a as added by 1996 PA 584, and section 8 as amended by 2006 PA 449.

The People of the State of Michigan enact:

Sec. 1. As used in this act:

- (a) “Alternative fuel” means that term as defined in section 151 of the motor fuel tax act, 2000 PA 403, MCL 207.1151.
- (b) “Alternative fuel dealer” means that term as defined in section 151 of the motor fuel tax act, 2000 PA 403, MCL 207.1151.
- (c) “Axle” means any 2 or more load-carrying wheels mounted in a single transverse vertical plane.
- (d) “Commissioner” means the state commissioner of revenue.
- (e) “Diesel gallon equivalent” means that term as defined in section 151 of the motor fuel tax act, 2000 PA 403, MCL 207.1151.
- (f) “Department” means the revenue division of the department of treasury.
- (g) “Motor carrier” means:
 - (i) 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 1 other state or Canadian province.
 - (ii) 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.
- (h) “Motor fuel” means diesel fuel as defined in section 2 of the motor fuel tax act, 2000 PA 403, MCL 207.1002. Beginning on October 1, 2015, motor fuel includes gasoline as that term is defined in section 3 of the motor fuel tax act, 2000 PA 403, MCL 207.1003.
- (i) “Nonprofit private, parochial, denominational, or public school, college, or university” means an elementary, secondary, or postsecondary educational facility.

(j) “Person” means a natural person, partnership, firm, association, joint stock company, limited liability company, limited liability partnership, syndicate, or corporation, and any receiver, trustee, conservator, or officer, other than a unit of government, having jurisdiction and control of property by virtue of law or by appointment of a court.

(k) “Public roads or highways” means a road, street, or place maintained by this state or a political subdivision of this state and generally open to use by the public as a matter of right for the purpose of vehicular travel, notwithstanding that they may be temporarily closed or travel restricted for the purpose of construction, maintenance, repair, or reconstruction.

(l) “Qualified commercial motor vehicle”, subject to subdivision (m), means a motor vehicle used, designed, or maintained for transportation of persons or property and 1 of the following:

(i) Having 3 or more axles regardless of weight.

(ii) Having 2 axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 12,000 kilograms.

(iii) Is used in a combination of vehicles, if the weight of that combination exceeds 26,000 pounds or 12,000 kilograms gross vehicle or registered gross vehicle weight.

(m) “Qualified commercial motor vehicle” does not include a recreational vehicle, a road tractor, truck, or truck tractor used exclusively in this state, a road tractor, truck, or truck tractor owned by a farmer and used in connection with the farmer’s farming operation and not used for hire, a school bus, a bus defined and certificated under the motor bus transportation act, 1982 PA 432, MCL 474.101 to 474.141, or a bus operated by a public transit agency operating under any of the following:

(i) A county, city, township, or village as provided by law, or other authority incorporated under 1963 PA 55, MCL 124.351 to 124.359. Each authority and governmental agency incorporated under 1963 PA 55, MCL 124.351 to 124.359, has the exclusive jurisdiction to determine its own contemplated routes, hours of service, estimated transit vehicle miles, costs of public transportation services, and projected capital improvements or projects within its service area.

(ii) An authority incorporated under the metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426, or that operates a transportation service pursuant to an interlocal agreement under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(iii) A contract entered into under 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, or 1951 PA 35, MCL 124.1 to 124.13.

(iv) An authority incorporated under the public transportation authority act, 1986 PA 196, MCL 124.451 to 124.479, or a nonprofit corporation organized under the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192, that provides transportation services.

(v) An authority financing public improvements to transportation systems under the revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(n) Qualified commercial motor vehicle includes a vehicle operated on a public road or highway owned by a farmer and used in connection with the farmer’s farming operation if the vehicle bears out of state registration plates of a state that does not give similar treatment to vehicles from this state.

Sec. 2. (1) A motor carrier licensed under this act shall pay a road tax calculated on the amount of motor fuel and alternative fuel consumed in qualified commercial motor vehicles on the public roads or highways within this state. Except as otherwise provided under subsection (6), the tax shall be at the rate prescribed under section 8(1)(b) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, for motor fuel consumed on the public roads or highways within this state. In addition, qualified commercial motor vehicles licensed under this act that travel in interstate commerce are subject to the definition of taxable motor fuels and alternative fuels and rates as defined by the respective international fuel tax agreement member jurisdictions. A motor carrier licensed under this act shall file a return and pay the tax due quarterly to the department on or before the last day of January, April, July, and October of each year on a form prescribed and furnished by the department. Each quarterly return and tax payment shall cover the liability for the annual quarter ending on the last day of the preceding month.

(2) The amount of motor fuel or alternative fuel consumed in the operation of a motor carrier on public roads or highways within this state shall be determined by dividing the miles traveled within this state by the average miles per gallon of motor fuel or applicable gallon equivalent of alternative fuel. The average miles per gallon of motor fuel or per gallon equivalent of alternative fuel, as applicable, shall be determined by dividing the miles traveled within and outside of this state by the total amount of motor fuel or alternative fuel consumed within and outside of this state.

(3) In the absence of records showing the average number of miles operated per gallon of motor fuel or per gallon equivalent of alternative fuel, as applicable, it is presumed that 1 gallon of motor fuel or applicable gallon equivalent of alternative fuel is consumed for every 4 miles traveled.

(4) The quarterly tax return shall be accompanied by a remittance covering any tax due.

(5) The commissioner, when he or she considers it necessary to ensure payment of the tax or to provide a more efficient administration of the tax, may require the filing of returns and payment of the tax for other than quarterly periods.

(6) Beginning October 1, 2015 and annually thereafter, the per gallon or per diesel gallon equivalent rate of tax under this act for motor fuel or alternative fuel consumed on the public roads or highways of this state is 1 of the following:

(a) For motor fuel, the applicable rate prescribed under section 8(1) of the motor fuel tax act, 2000 PA 403, MCL 207.1008, for the same period.

(b) For alternative fuel, the rate prescribed under section 152 of the motor fuel tax act, 2000 PA 403, MCL 207.1152, for the same period.

Sec. 2a. (1) The department, on behalf of this state, may enter into a reciprocal agreement providing for the imposition of a motor fuel or alternative fuel tax on an apportionment or allocation basis with the proper authority of a state, a commonwealth, the District of Columbia, a state or province of a foreign country, or a territory or possession either of the United States or of a foreign country. Under this subsection, the department shall enter into the international fuel tax agreement.

(2) The department may promulgate rules to implement and enforce the provisions of the international fuel tax agreement. Rules promulgated under this subsection shall be promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) As required by the intermodal surface transportation efficiency act of 1991, Public Law 102-240, 105 Stat. 1914, if the department entered into the international fuel tax agreement, and if the provisions set forth in that agreement are different from this act, then the provisions of the agreement shall control.

(4) This section constitutes complete authority for the imposition of motor fuel or alternative fuel taxes upon an apportionment or allocation basis.

Sec. 4. (1) A person filing a return under section 2 who purchased motor fuel or alternative fuel in this state upon which a tax was imposed and not refunded under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170, is entitled to a credit against the tax imposed by this act equal to the tax paid when purchasing the motor fuel or alternative fuel under the motor fuel tax act, 2000 PA 403, MCL 207.1001 to 207.1170. The excess of a credit allowed by this subsection over tax liabilities imposed by this act shall be refunded to the taxpayer.

(2) In order to secure credit under subsection (1) for motor fuel or alternative fuel purchased in this state, the motor carrier shall secure a receipt showing the seller's name, the number of gallons of motor fuel or applicable gallon equivalents of alternative fuel, the type of motor fuel or alternative fuel, the tax rate charged, the address of the seller, the license number or unit number of the commercial motor vehicle, and the date of sale.

(3) A refund, when approved by the department, shall be payable from the revenue received under this act.

(4) A person, or an agent, employee, or representative of the person, who makes a false statement in any return under this act or who submits or provides an invoice or invoices in support of the false statement upon which alterations or changes exist in the date, name of seller or purchaser, number of gallons or gallon equivalents, identity of the qualified commercial motor vehicle into which fuel was delivered or the amount of tax that was paid, or who knowingly presents any return or invoice containing a false statement, or who collects or causes to be paid a refund without being entitled to the refund, forfeits the full amount of the claim and is guilty of a misdemeanor, punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

Sec. 5. (1) A person required to be licensed by this act shall not act as a motor carrier in this state unless the person is the holder of an unrevoked license issued by the department or is the holder of an unrevoked license issued under the international fuel tax agreement by this state or another member jurisdiction of the international fuel tax agreement. To procure a license, a motor carrier shall file with the department a verified application upon a form prescribed and to be furnished by the department. The application shall contain the name and address of the motor carrier and, if a partnership, limited liability company, or corporation, the names and addresses of the persons constituting the firm, partnership, association, joint stock company, limited liability company, syndicate, or corporation, the name of its resident agent, the location of its predominant place of business, both within and outside of this state, and other pertinent information the department may require.

(2) The department shall issue to each motor carrier 1 license per person and 2 decals for each qualified commercial motor vehicle. A decal shall be affixed respectively to the right-hand side and left-hand side of the cab of every qualified commercial motor vehicle while it is being operated in this state by each person licensed under this act. A copy of the license shall be carried in each cab while it is being operated.

(3) For cause, a motor carrier may be required to file with the department a surety bond payable to this state, upon which the applicant is the obligor, in the sum of 3 times the highest estimated quarterly tax, or \$1,000.00, whichever is greater. This surety bond shall be conditioned upon the applicant complying with this act and with the rules promulgated

under this act, promptly filing true reports, and paying the taxes, interest, and penalties required by this act. Each surety bond shall be approved as to amount and sureties by the department. The department may accept cash or securities instead of a surety bond.

(4) The commissioner may waive the bond requirement for a motor carrier exempt from the reporting requirements of section 2 when the collection of taxes would not be impaired by lack of security of a bond required by this section.

(5) The license and decals are not assignable or transferable to another person and are valid only for the person in whose name they are issued. However, upon application to the department, a motor carrier, upon the sale, conveyance, disposal, or replacement of a qualified commercial motor vehicle, may transfer the license and decals for that qualified commercial motor vehicle to another qualified commercial motor vehicle of the motor carrier that is required to be licensed under this act. The department shall issue replacement decals for the newly licensed qualified commercial motor vehicle that authorizes the holder of the qualified commercial motor vehicle license to use and consume motor fuel or alternative fuel in the qualified commercial motor vehicle upon the public roads or highways of this state until the original license would have expired. The department may require the payment of a fee to cover the administrative costs of issuing a replacement license or decals.

(6) Upon filing of the application and upon posting of any bond as required, the department shall issue to the applicant a license and decals that authorize the holder to operate qualified commercial motor vehicles using and consuming motor fuels or alternative fuels upon the public roads or highways of this state until January 1 of the year following the date of issuance.

(7) If a licensee ceases to engage in business within this state, the licensee shall notify the department in writing within 15 days after discontinuance.

Sec. 6a. (1) Except as provided in subsection (3), the tax imposed by this act shall be administered under 1941 PA 122, MCL 205.1 to 205.31. In case of conflict between 1941 PA 122, MCL 205.1 to 205.31, and this act, this act shall prevail.

(2) Tax due to other member jurisdictions of the international fuel tax agreement that is incurred by a person while operating on a current, suspended, or revoked license issued by the department under the international fuel tax agreement is considered tax imposed by this act and a tax debt due to this state.

(3) A refund claim involving the payment of a tax that was paid under this act or in connection with a return filed under this act may not be filed more than 18 months after the date the motor fuel or alternative fuel was purchased.

Sec. 8. (1) Every qualified commercial motor vehicle leased to a motor carrier is subject to this act to the same extent and in the same manner as a qualified commercial motor vehicle owned by a motor carrier.

(2) A lessor of qualified commercial motor vehicles may be considered a motor carrier with respect to qualified commercial motor vehicles leased to others, if the lessor supplies or pays for the motor fuel or alternative fuel consumed by the vehicles or bills rental or other charges calculated to include the cost of motor fuel or alternative fuel. A lessee motor carrier may exclude a qualified commercial motor vehicle leased from others from the reports and liabilities required by this act if that qualified commercial motor vehicle has been leased from a lessor who is a motor carrier under this act and the lease agreement provides for the lessor to pay the cost of motor fuel or alternative fuel and motor fuel or alternative fuel taxes.

(3) Upon application by a licensed motor carrier, the department may authorize a licensed motor carrier leasing qualified commercial motor vehicles from 2 or more lessors to file consolidated reports for these lessors.

(4) This section governs the primary liability under this act of lessors and lessees of qualified commercial motor vehicles. For tax liabilities incurred before April 1, 2005, 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 are jointly and severally responsible and liable for compliance with this act and for the payment of tax due. However, the aggregate of taxes collected from a lessor and lessee by this state under this act shall not exceed the total amount of taxes due and costs and penalties imposed.

(5) For tax liabilities arising after April 1, 2005, 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. If the nonresponsible party does not obtain a copy of the responsible party's valid international fuel tax agreement registration and the responsible party fails in whole or in part to discharge his or her liability, then the responsible and nonresponsible parties are jointly and severally responsible and liable for compliance with this act and payment of tax due. If the lease agreement does not identify the party responsible for payment of fuel taxes under this act, then both parties are jointly and severally responsible and liable for compliance with this act and payment of tax due. However, the aggregate of taxes collected from a lessor and lessee by this state under this act shall not exceed the total amount of taxes due and costs and penalties imposed. If the nonresponsible party under the lease maintains a copy of the responsible party's valid international fuel tax agreement registration on file, the nonresponsible party has no responsibility or liability for compliance with this act or payment

of any taxes, costs, or penalties due under this act relating to the motor fuel or alternative fuel consumed under the lease.

Sec. 9. The department may examine the books, invoices, receipts, records, and papers of a motor carrier, fuel supplier, or alternative fuel dealer that pertain to the motor fuel or alternative fuel received, used, purchased, shipped, or delivered to verify the truth and accuracy of any statement, report, or return.

Sec. 10. Each motor carrier shall maintain and keep, for a period of at least 4 years, suitable books, records, and accounts of all motor fuel and alternative fuel purchased, sold, dispensed, or used, together with all invoices, delivery tickets, bills of lading, and other pertinent records and papers as required by the department for the administration of this act.

Enacting section 1. This amendatory act takes effect October 1, 2015.

Enacting section 2. This amendatory act does not take effect unless House Joint Resolution UU of the 97th Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor