

HOUSE BILL No. 4738

June 17, 2015, Introduced by Reps. McCready, Poleski, Callton, Muxlow and Yonker and referred to the Committee on Transportation and Infrastructure.

A bill to amend 2000 PA 403, entitled
"Motor fuel tax act,"
by amending sections 2, 3, 6, and 8 (MCL 207.1002, 207.1003,
207.1006, and 207.1008), section 2 as amended by 2002 PA 668,
section 3 as amended by 2006 PA 277, and section 8 as amended by
2006 PA 268.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Alcohol" means fuel grade ethanol or a mixture of fuel
3 grade ethanol and another product.

4 (b) "Blendstock" means and includes any petroleum product
5 component of motor fuel, such as naphtha, reformate, or toluene; or
6 any oxygenate that can be blended for use in a motor fuel.

1 (c) "Blended motor fuel" means a mixture of motor fuel and
2 another liquid, other than a de minimis amount of a product
3 including, but not limited to, carburetor detergent or oxidation
4 inhibitor, that can be used as motor fuel in a motor vehicle.

5 (d) "Blender" means and includes any person who produces
6 blended motor fuel outside of the bulk transfer/terminal system.

7 (e) "Blends" or "blending" means the mixing of 1 or more
8 petroleum products, with or without another product, regardless of
9 the original character of the product blended, if the product
10 obtained by the blending is capable of use in the generation of
11 power for the propulsion of a motor vehicle, an airplane, or a
12 marine vessel. Blending does not include mixing that occurs in the
13 process of refining by the original refiner of crude petroleum or
14 the blending of products known as lubricating oil in the production
15 of lubricating oils and greases.

16 (f) "Bulk end user" means a person who receives into the
17 person's own storage facilities by transport truck or tank wagon
18 motor fuel for the person's own consumption.

19 (g) "Bulk plant" means a motor fuel storage and distribution
20 facility that is not a terminal and from which motor fuel may be
21 withdrawn by a tank wagon, a transport truck, or a marine vessel.

22 (h) "Bulk transfer" means a transfer of motor fuel from 1
23 location to another by pipeline tender or marine delivery within
24 the bulk transfer/terminal system, including, but not limited to,
25 all of the following transfers:

26 (i) A marine vessel movement of motor fuel from a refinery or
27 terminal to a terminal.

1 (ii) Pipeline movements of motor fuel from a refinery or
2 terminal to a terminal.

3 (iii) Book transfers of motor fuel within a terminal between
4 licensed suppliers before completion of removal across the terminal
5 rack.

6 (iv) Two-party exchanges between licensed suppliers.

7 (i) "Bulk transfer/terminal system" means the motor fuel
8 distribution system consisting of refineries, pipelines, marine
9 vessels, and terminals. Motor fuel in a refinery, pipeline,
10 terminal, or a marine vessel transporting motor fuel to a refinery
11 or terminal is in the bulk transfer/terminal system. Motor fuel in
12 a fuel storage facility including, but not limited to, a bulk plant
13 that is not part of a refinery or terminal, in the fuel supply tank
14 of any engine or motor vehicle, in a marine vessel transporting
15 motor fuel to a fuel storage facility that is not in the bulk
16 transfer/terminal system, or in any tank car, rail car, trailer,
17 truck, or other equipment suitable for ground transportation is not
18 in the bulk transfer/terminal system.

19 (j) "Carrier" means an operator of a pipeline or marine vessel
20 engaged in the business of transporting motor fuel above the
21 terminal rack.

22 (k) "Commercial motor vehicle" means a motor vehicle licensed
23 under the motor carrier fuel tax act, 1980 PA 119, MCL 207.211 to
24 207.234.

25 (l) **"CONSUMER PRICE INDEX" MEANS THE UNITED STATES CONSUMER**
26 **PRICE INDEX FOR ALL URBAN CONSUMERS AS DEFINED AND REPORTED BY THE**
27 **UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS.**

1 (M) ~~(H)~~ "Dead storage" is the amount of motor fuel that cannot
2 be pumped out of a motor fuel storage tank because the motor fuel
3 is below the mouth of the tank's draw pipe. The amount of motor
4 fuel in dead storage is 200 gallons for a tank with a capacity of
5 less than 10,000 gallons and 400 gallons for a tank with a capacity
6 of 10,000 gallons or more.

7 (N) ~~(m)~~ "Denaturants" means ~~and includes~~ gasoline, natural
8 gasoline, gasoline components, or toxic or noxious materials added
9 to fuel grade ethanol to make it unsuitable for beverage use but
10 not unsuitable for automotive use.

11 (O) ~~(n)~~ "Department" means the ~~bureau of revenue within the~~
12 department of treasury or its designee.

13 (P) ~~(e)~~ "Destination state" means ~~the A~~ state, Canadian
14 province or territory, or foreign country to which motor fuel is
15 directed for export.

16 (Q) ~~(p)~~ "Diesel fuel" means any liquid other than gasoline
17 that is capable of use as a fuel or a component of a fuel in a
18 motor vehicle that is propelled by a diesel-powered engine or in a
19 diesel-powered train. Diesel fuel includes number 1 and number 2
20 fuel oils, kerosene, dyed diesel fuel, and mineral spirits. Diesel
21 fuel also includes any blendstock or additive that is sold for
22 blending with diesel fuel, any liquid prepared, advertised, offered
23 for sale, sold for use as, or used in the generation of power for
24 the propulsion of a diesel-powered engine, airplane, or marine
25 vessel. An additive or blendstock is presumed to be sold for
26 blending unless a certification is obtained for federal purposes
27 that the substance is for a use other than blending for diesel

1 fuel. Diesel fuel does not include an excluded liquid.

2 (R) ~~(q)~~ "Dyed diesel fuel" means diesel fuel that is dyed in
3 accordance with internal revenue service rules or pursuant to any
4 other internal revenue service requirements, including any
5 invisible marker requirements.

6 (S) ~~(r)~~ "Eligible purchaser" means a person who has been
7 authorized by the department under section 75 to make ~~the~~ **AN**
8 election under section 74.

9 (T) ~~(s)~~ "Excluded liquid" means that term as defined in 26
10 ~~C.F.R.~~ **CFR** 48.4081-1.

11 (U) ~~(t)~~ "Export" means to obtain motor fuel in this state for
12 sale or other distribution outside of this state. Motor fuel
13 delivered outside of this state by or for the seller constitutes an
14 export by the seller and motor fuel delivered outside of this state
15 by or for the purchaser constitutes an export by the purchaser.

16 (V) ~~(u)~~ "Exporter" means a person who exports motor fuel.

17 Sec. 3. As used in this act:

18 (a) "Fuel feedstock user" means a person who receives motor
19 fuel for the person's own use in the manufacture or production of
20 any substance other than motor fuel.

21 (b) "Fuel grade ethanol" means the American society for
22 testing and materials standard in effect on ~~the effective date of~~
23 ~~this act~~ **APRIL 1, 2001** as the D-4806 specification for denatured
24 fuel grade ethanol for blending with gasoline.

25 (c) "Fuel transportation vehicle" means a vehicle designed or
26 used to transport motor fuel on the public roads or highways. Fuel
27 transportation vehicle includes, but is not limited to, a transport

1 truck and a tank wagon. Fuel transportation vehicle does not
2 include a vehicle transporting a nurse tank or limited volume
3 auxiliary-mounted supply tank used for fueling an implement of
4 husbandry.

5 (d) "Gallon" means a unit of liquid measure as customarily
6 used in the United States containing 231 cubic inches, or 4 quarts,
7 or its metric equivalent expressed in liters. Where the term gallon
8 appears in this act, the term liters is interchangeable so long as
9 the equivalence of a gallon and 3.785 liters is preserved. A
10 quantity required to be furnished under this act may be specified
11 in liters when authorized by the department.

12 (e) "Gasohol" means a blended motor fuel composed of gasoline
13 and fuel grade ethanol.

14 (f) "Gasoline" means ~~and includes~~ gasoline, alcohol, gasohol,
15 casing head or natural gasoline, benzol, benzine, naphtha, and any
16 blendstock additive, or other product including methanol that is
17 sold for blending with gasoline or for use on the road other than
18 products typically sold in containers of less than 5 gallons.
19 Gasoline also includes a liquid prepared, advertised, offered for
20 sale, sold for use as, or used in the generation of power for the
21 propulsion of a motor vehicle, airplane, or marine vessel,
22 including a product obtained by blending together any 1 or more
23 products of petroleum, with or without another product, and
24 regardless of the original character of the petroleum products
25 blended, if the product obtained by the blending is capable of use
26 in the generation of power for the propulsion of a motor vehicle,
27 airplane, or marine vessel. The blending of all of the above named

1 products, regardless of their name or characteristics, shall
2 conclusively be presumed to have been done to produce motor fuel,
3 unless the product obtained by the blending is entirely incapable
4 of use as motor fuel. Gasoline also includes transmix. Gasoline
5 does not include diesel fuel or leaded racing fuel. An additive or
6 blendstock is presumed to be sold for blending unless a
7 certification is obtained for federal purposes that the substance
8 is for a use other than blending for gasoline.

9 (g) "Gross gallons" means the total measured product,
10 exclusive of any temperature or pressure adjustments,
11 considerations, or deductions, in gallons.

12 ~~—— (h) "Heating oil" means a motor fuel including dyed diesel~~
13 ~~fuel that is burned in a boiler, furnace, or stove for heating,~~
14 ~~agricultural, or industrial processing purposes.~~

15 (H) ~~(i)~~—"Implement of husbandry" means ~~and includes~~ a farm
16 tractor, a vehicle designed to be drawn or pulled by a farm tractor
17 or animal, a vehicle that directly harvests farm products, ~~and~~ OR a
18 vehicle that directly applies fertilizer, spray, or seeds to a farm
19 field. Implement of husbandry does not include a motor vehicle
20 licensed for use on the public roads or highways of this state.

21 (I) ~~(j)~~—"Import" means to bring motor fuel into this state by
22 motor vehicle, marine vessel, pipeline, or any other means.
23 ~~However, import~~ **IMPORT** does not include bringing motor fuel into
24 this state in the fuel supply tank of a motor vehicle if the motor
25 fuel is used to power that motor vehicle. Motor fuel delivered into
26 this state from outside of this state by or for the seller
27 constitutes an import by the seller, and motor fuel delivered into

1 this state from ~~out~~**OUTSIDE** of this state by or for the purchaser
2 constitutes an import by the purchaser.

3 (J) ~~(k)~~—"Importer" means a person who imports motor fuel into
4 this state.

5 (K) ~~(l)~~—"Import verification number" means the number assigned
6 by the department to an individual delivery of motor fuel by a
7 transport truck, tank wagon, marine vessel, or rail car in response
8 to a request for a number from an importer or transporter carrying
9 motor fuel into this state for the account of an importer.

10 (l) "INFLATION RATE" MEANS THE ANNUAL PERCENTAGE CHANGE IN THE
11 CONSUMER PRICE INDEX, AS DETERMINED BY THE DEPARTMENT COMPARING THE
12 2 MOST RECENT JULY 1 THROUGH JUNE 30 PERIODS THAT ARE IMMEDIATELY
13 PRECEDING THE EFFECTIVE DATE OF THE RATE PRESCRIBED UNDER SECTION
14 8(1) (D), CONVERTED TO DECIMALS. IF THE ANNUAL PERCENTAGE CHANGE IS
15 NEGATIVE, THEN THE INFLATION RATE IS 0.

16 (m) "In this state" means the area within the borders of this
17 state, including all territories within the borders owned by, held
18 in trust by, or added to the United States of America.

19 (n) "Invoiced gallons" means the number of gallons actually
20 billed on an invoice.

21 Sec. 6. As used in this act:

22 (a) "Tank wagon" means a straight truck having 1 or more
23 compartments other than the fuel supply tank designed or used to
24 carry motor fuel.

25 (b) "Tank wagon operator-importer" means a person who operates
26 a tank wagon and imports motor fuel into this state from another
27 state.

1 (c) "Tax" means a tax, interest, or penalty levied under this
2 act.

3 (d) "Terminal" means a motor fuel storage and distribution
4 facility that meets all of the following requirements:

5 (i) Is registered as a qualified terminal by the internal
6 revenue service.

7 (ii) Is supplied by pipeline or marine vessel.

8 (iii) Has a rack from which motor fuel may be removed.

9 (e) "Terminal operator" means a person who owns, operates, or
10 otherwise controls a terminal.

11 (f) "Transmix" means the mixed product that results from the
12 buffer or interface of 2 different products in a pipeline shipment,
13 or a mixture of 2 different products within a refinery or terminal
14 that results in an off-grade mixture.

15 (g) "Transport truck" means a semitrailer combination rig
16 designed or used for the purpose of transporting motor fuel over
17 the public roads or highways.

18 (h) "Transporter" means an operator of a railroad or rail car,
19 tank wagon, transport truck, or other fuel transportation vehicle
20 engaged in the business of transporting motor fuel below the
21 terminal rack.

22 (i) "Two-party exchange" means a transaction in which motor
23 fuel is transferred from 1 licensed supplier or licensed permissive
24 supplier to another licensed supplier or licensed permissive
25 supplier where all of the following occur:

26 (i) The transaction includes a transfer from the person who
27 holds the original inventory position for motor fuel in the

1 terminal as reflected in the records of the terminal operator.

2 (ii) The exchange transaction is completed before removal
3 across the rack from the terminal by the receiving licensed
4 supplier or licensed permissive supplier.

5 (iii) The terminal operator in its books and records treats
6 the receiving exchange party as the supplier that removes the
7 product across a terminal rack for purposes of reporting the
8 transaction to the department.

9 (j) "Ultimate vendor" means the person who sells motor fuel to
10 the end user of the fuel.

11 (K) "WHOLESALE PRICE" MEANS THE 12-MONTH AVERAGE PRICE PER
12 GALLON OF GASOLINE OVER THE PERIOD FROM JANUARY 2014 THROUGH
13 DECEMBER 2014 CHARGED BY A LICENSED SUPPLIER, AS DETERMINED BY THE
14 DEPARTMENT. WHOLESALE PRICE DOES NOT INCLUDE THE TAX IMPOSED BY
15 THIS ACT, PREPAID SALES TAX UNDER SECTION 6A OF THE GENERAL SALES
16 TAX ACT, 1933 PA 167, MCL 205.56A, FEDERAL EXCISE TAX UNDER SECTION
17 4081 OF THE INTERNAL REVENUE CODE, 26 USC 4081, ANY OTHER FEDERAL
18 TAX UPON MOTOR FUEL, OR AN ENVIRONMENTAL PROTECTION REGULATORY FEE
19 IMPOSED UNDER SECTION 21508 OF THE NATURAL RESOURCES AND
20 ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.21508.

21 (I) ~~(k)~~—"Wholesaler" means a person who acquires motor fuel
22 from a supplier or from another wholesaler for subsequent sale and
23 distribution at wholesale by a fuel transportation vehicle, rail
24 car, or other motor vehicle.

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

1 (a) ~~Except as otherwise provided in subdivision (c),~~ **THROUGH**
2 **SEPTEMBER 30, 2015,** 19 cents per gallon on gasoline.

3 (b) ~~Except as otherwise provided in subdivision (d),~~ **THROUGH**
4 **SEPTEMBER 30, 2015,** 15 cents per gallon on diesel fuel.

5 ~~—— (c) Subject to subsections (10) and (11), 12 cents per gallon~~
6 ~~on gasoline that is at least 70% ethanol. Under this subdivision,~~
7 ~~blenders of ethanol and gasoline outside of the bulk transfer~~
8 ~~terminal system shall obtain a blender's license and are subject to~~
9 ~~the blender reporting requirements under this act. A licensed~~
10 ~~supplier who blends ethanol and gasoline shall also obtain a~~
11 ~~blender's license.~~

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

19 **(C) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISIONS (D) AND (E),**
20 **BEGINNING OCTOBER 1, 2015, A CENTS-PER-GALLON RATE ON MOTOR FUEL**
21 **CALCULATED AS 8.9% OF THE WHOLESALE PRICE.**

22 **(D) EXCEPT AS OTHERWISE PROVIDED IN SUBDIVISION (E), BEGINNING**
23 **WITH THE EFFECTIVE RATE ON OCTOBER 1, 2016 AND OCTOBER 1 OF EACH**
24 **YEAR THEREAFTER, THE DEPARTMENT SHALL DETERMINE A CENTS-PER-GALLON**
25 **RATE ON MOTOR FUEL THAT SHALL BE CALCULATED BY MULTIPLYING THE**
26 **CENTS-PER-GALLON RATE IN EFFECT DURING THE IMMEDIATELY PRECEDING**
27 **FISCAL YEAR BY 1 PLUS THE INFLATION RATE, AND ROUNDING UP THE**

1 PRODUCT TO THE NEAREST CENT.

2 (E) BEGINNING OCTOBER 1, 2015, THE CENTS-PER-GALLON RATE ON
3 MOTOR FUEL IMPOSED UNDER THIS SUBSECTION SHALL NOT EXCEED 30 CENTS
4 PER GALLON OR BE LESS THAN 23 CENTS PER GALLON, AS DETERMINED BY
5 THE DEPARTMENT.

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

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

11 (4) Tax is also imposed at the rate described in subsection
12 (1) on net gallons of motor fuel, including transmix, lost or
13 unaccounted for, at each terminal in this state. The tax shall be
14 measured annually and shall apply to the net gallons of motor fuel
15 lost or unaccounted for that are in excess of 1/2 of 1% of all net
16 gallons of fuel removed from the terminal across the rack or in
17 bulk.

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

19 (a) To require persons who operate a motor vehicle on the
20 public roads or highways of this state to pay for the privilege of
21 using those roads or highways.

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

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

1 (d) That the tax imposed by this act be collected and paid at
2 those times, in the manner, and by those persons specified in this
3 act.

4 (6) Bills of lading and invoices shall identify the blended
5 product and the correct fuel product code. The motor fuel tax rate
6 for each product shall be listed separately on each invoice.
7 Licensees shall report the correct fuel product code for the
8 blended product as required by the department. When fuel is blended
9 below the terminal rack, new bills of lading and invoices shall be
10 generated and submitted to the department upon request. All bills
11 of lading and invoices shall meet the requirements provided under
12 this act.

13 (7) Notwithstanding any other provision of this act, all
14 facilities in this state that produce motor fuel and distribute the
15 fuel from a rack for purposes of this act are a terminal and shall
16 obtain a terminal operator license and shall comply with all
17 terminal operator reporting requirements under this act. All
18 position holders in these facilities shall be licensed as a
19 supplier and shall comply with all supplier requirements under this
20 act.

21 ~~—— (8) If the tax on gasoline that contains at least 70% ethanol~~
22 ~~or diesel fuel that contains at least 5% biodiesel held in storage~~
23 ~~outside of the bulk transfer/terminal system on the effective date~~
24 ~~of the amendatory act that added this subsection has previously~~
25 ~~been paid at the rates imposed by subsection (1)(a) and (b), the~~
26 ~~person who paid the tax may claim a refund for the difference~~
27 ~~between the rates imposed by subsection (1)(a) and (b) and the~~

~~rates imposed by subsection (1) (c) and (d). All of the following shall apply to a refund claimed under this subsection:~~

~~—— (a) The refund shall be claimed on a form prescribed by the department.~~

~~—— (b) The refund shall apply only to:~~

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

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

~~—— (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. 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, 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, 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 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 is greater than \$2,500,000.00.~~

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

~~—— (12) As used in this section:~~

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

1 ~~agriculture.~~

2 ~~—— (b) "Ethanol" means denatured fuel ethanol that is suitable~~
3 ~~for use in a spark ignition engine when mixed with gasoline so long~~
4 ~~as the mixture meets the American society for testing and materials~~
5 ~~D-5798 specifications.~~

6 Enacting section 1. This amendatory act takes effect October
7 1, 2015.