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BILL ANALYSIS

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Senate Bill 746 (as enrolled)
Sponsor: Senator Dave Honigman
Senate Committee: Finance
House Committee: Transportation

PUBLIC ACT 584 of 1996

Date Completed: 1-27-97

RATIONALE

Under the International Fuel Tax Agreement (IFTA), of which Michigan is a member, motor carriers pay state diesel fuel taxes based on the number of miles they drive in a state. Motor carriers file tax returns only in their base state (the state in which they register). The base state collects the motor fuel use tax for all member jurisdictions and distributes it to member states based on miles traveled by the motor carrier in each state. In Michigan, motor carriers file with the Michigan Department of Treasury quarterly reports listing total miles traveled in this State and fuel purchased here. Based on whether the fuel was purchased in Michigan, and the number of miles traveled in this State, the motor carrier pays a net tax due or is entitled to a refund. It has been claimed that recent changes in the taxation of the purchase and use of diesel fuel in Michigan have resulted in a disincentive for interstate motor carriers to purchase fuel in Michigan, and that this could have serious economic consequences for certain Michigan businesses. Reportedly, there are approximately 88 major diesel fuel retailers in Michigan with over 2,800 total employees; sales of diesel fuel amount to over 700 million gallons per year in the State.

The taxation of diesel fuel in Michigan involves three different taxes prescribed by three separate statutes: the Motor Fuel Tax Act, the General Sales Tax Act, and the Motor Carrier Fuel Tax Act. The Motor Fuel Tax Act provides for a specific tax on diesel motor fuel equal to the rate per gallon imposed on gasoline (15 cents per gallon). The sales tax is applied to the purchase price, pursuant to the General Sales Tax Act. Unlike the laws of any other state, the Motor Fuel Tax Act also provides for a 6-cent per gallon discount for diesel fuel delivered into the fuel supply tank of a commercial vehicle licensed under the Motor *Carrier* Fuel Tax Act. Under that Act, a diesel fuel purchaser cannot obtain the 6-cent per gallon discount without paying for and displaying a license (known as the diesel fuel sticker). The Motor Carrier Fuel Tax Act further imposes a tax for the use of the roads in Michigan, based upon the number of gallons of fuel used in Michigan. The tax rate is the same rate as the diesel fuel tax (15 cents) minus the 6-cent discount, thus equaling 9 cents per gallon. The purchaser of the fuel, however, is allowed a credit against the motor carrier fuel tax he or she already paid upon purchase in Michigan (9 cents per gallon if the purchaser has a diesel fuel sticker), and a refund for those gallons not consumed in Michigan. In effect, then, the 9 cents per gallon tax the purchaser pays at the pump under the Motor Fuel Tax Act is a prepayment of the 9 cents per gallon tax for gallons consumed on Michigan roads as imposed by the Motor Carrier Fuel Tax Act. The sales tax paid, however, is not refundable regardless of where the fuel is consumed.

Michigan is one of only six states that assess a sales tax on diesel fuel, and none of these other states borders Michigan. This means, then, that a trucker who purchases fuel outside the State pays 9 cents per gallon of fuel he or she consumes in Michigan, while a purchaser of diesel fuel in Michigan pays 9 cents per gallon consumed in Michigan, plus sales tax of 6 cents for every dollar of the purchase. It has been pointed out that the sales tax increase from 4% to 6%, as of May 1, 1994, exacerbated this situation because it meant that truckers who purchased no fuel here but drove in Michigan had no tax increase, but truckers who purchased fuel here had an increase of 2% per dollar of purchase.

A further issue concerning the diesel fuel tax involves the license fee charged under the Motor Carrier Fuel Tax Act. Under IFTA regulations, the license and diesel stickers issued by a trucker's home state qualify the licensee to operate in all member jurisdictions without further licensing requirements or identification requirements in regard to motor fuel taxes. This precludes the State from collecting the diesel sticker fee it charged to nonresident motor carriers. The annual charge was $25 for out-of-State trucks and $92 for in-State trucks; the State collected approximately $15 million and $6 million, respectively, for a total of $21 million. Since the out-of-State fee can no longer be collected, it has been recommended that the in-State fee also be eliminated. To help make up for this lost revenue, and to address the concern that Michigan's diesel fuel tax is a disincentive to the purchase of diesel fuel in Michigan, it has been recommended that changes be made to the structure of the State diesel fuel tax.

CONTENT

The bill amends the Motor Carrier Fuel Tax Act to increase the tax on diesel fuel consumed in Michigan by a qualified commercial motor vehicle to 21 cents per gallon; allow a motor carrier a credit against the tax of 6 cents per gallon for the sales tax paid on diesel fuel purchased in Michigan; eliminate language in the Act that requires a motor carrier to purchase an annual diesel fuel license; and repeal certain sections of the Act that require the Department of Treasury to take actions against persons who fail or refuse to pay tax due under the Act. (Although the bill specifies an effective date of January 1, 1997, the Legislature did not give the bill immediate effect; therefore, the bill will take effect on March 31, 1997.)

The bill raises to 21 cents per gallon (from 9 cents per gallon with a diesel sticker) the tax on diesel fuel consumed on Michigan roads by a licensed motor carrier, and allows a motor carrier to credit against the tax, on each quarterly return, an amount equal to 6 cents per gallon of the sales tax paid on diesel fuel purchased in Michigan during the preceding quarter.

Currently, a license applicant must pay to the State an annual license fee of $92 per vehicle registered as an in-State vehicle and $25 per vehicle for an out-of-State vehicle. The bill eliminates these provisions. The Department of Treasury will be required to issue to each motor carrier one license per person and two decals for each qualified commercial motor vehicle. A copy of the license must be carried in each cab while it is being operated.

Currently, a person is prohibited from operating as a motor carrier in Michigan unless he or she holds an unrevoked license issued by the Department of Treasury. The bill provides that a person required to be licensed under the Act may not operate as a motor carrier in Michigan unless he or she holds an unrevoked license issued by the Department or issued under IFTA by Michigan or another IFTA member.

Currently, every motor carrier at the time of applying for a license may be required to file a surety bond with the Department of Treasury. The bill provides, instead, that the motor carrier may be required to provide a surety bond "for cause".

The bill allows a person whose license has been revoked or who has been refused a license to appeal the decision of the Department under procedures prescribed in the Revenue Act.

Currently, the Motor Carrier Fuel Tax Act requires the Michigan Public Service Commission to assist the Department of Treasury in enforcing the Act. The bill specifies that the Department of State Police must assist the Treasury Department.

The bill requires that the tax imposed under the Act be administered pursuant to the Revenue Act. Tax due other IFTA jurisdictions, incurred by persons while operating on a current, suspended, or revoked license issued by the Department under IFTA, must be considered a tax imposed under the Act and a tax debt due to Michigan.

Under the Act, a motor carrier must file a quarterly tax return, and the tax due, for fuel consumed in Michigan. The bill deletes a provision that allows the Revenue Commissioner to exempt from the reporting and payment requirements motor carriers whose total millage is within Michigan.

The bill repeals several sections of the Act regarding the failure of a taxpayer to file required reports or pay the tax; levies for unpaid taxes; tax liens; and assessments for unpaid taxes. (Note: The Revenue Act contains provisions that give the Revenue Commissioner all powers in connection with taxes due to or claimed by the State.)

Further, the bill repeals a section of the Act that makes it a misdemeanor (punishable by a fine of up to $1,000, imprisonment for up to one year, or both) for a person to make a false statement, or present a fraudulent receipt for the sale or purchase of motor fuel, for the purpose of obtaining a credit, refund, or reduction of tax liability. The bill specifies, instead, that a person, or an agent, employee, or representative of the person, who makes a false statement in any return under the Act, who submits or provides an invoice or invoices upon which alterations or changes exist in the date, name of seller or purchaser, number of gallons, identity of the motor vehicle into which fuel was delivered or the amount of tax that was paid, 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 it, forfeits the full amount of the claim and is guilty of a misdemeanor punishable by a fine of up to $5,000, imprisonment for up to one year, or both.

MCL 207.211 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Two distinct problems have developed regarding the taxation of diesel fuel, and these problems must be addressed. The first involves an increase in the sales tax that affected the complicated interaction of the three taxes that determine how much a trucker pays for diesel fuel tax. The problem may be best illustrated through the use of an example. If motor carrier #1 buys 100 gallons of fuel at the rate of $1 per gallon in Michigan, he or she must pay 15 cents per gallon, but is allowed a 6-cent per gallon discount at the pump if displaying a diesel discount sticker purchased from the State. Carrier #1, then, pays 9 cents per gallon ($9), plus 6% sales tax ($100 x .06 = $6) for a total of $15 tax at the pump. Though carrier #1 has paid $15, this may not represent the carrier's actual tax liability, because the carrier is liable for only those gallons consumed on Michigan roads (at 9 cents per gallon). If carrier #1 uses 50 gallons in-State and 50 elsewhere, the carrier is entitled to a refund of 9 cents per gallon not consumed in Michigan (50 x $0.09), or $4.50. The carrier cannot retrieve the sales tax paid, so carrier #1 has a total tax liability of $10.50 ($15 - $4.50). Carrier #2, making the same 100-gallon purchase at $1 per gallon in a neighboring state, is liable for tax in Michigan only for gallons consumed on Michigan roads. If carrier #2 uses 50 gallons in Michigan, the carrier's tax liability is $4.50 (50 x $0.09). While carrier #2 has to pay a diesel fuel tax in the state where the fuel was purchased, the carrier does not have the nonrefundable sales tax liability that he or she would have had if the purchase had been made in Michigan.

Michigan's 2% sales tax increase has put additional emphasis on the nonrefundable nature of the sales tax as applied to diesel fuel. In the example above, carrier #1 pays a total tax of $10.50 while carrier #2 pays $4.50, for the same number of miles driven in Michigan. It can be seen that this discrepancy in taxation, based solely upon the location of the purchase, puts diesel fuel dealers in Michigan at a competitive disadvantage. By raising the cost of diesel fuel consumed in Michigan while at the same time allowing a 6-cent credit per gallon for sales tax paid, the bill will eliminate the disincentive for truckers to purchase diesel fuel in Michigan. Truckers no longer will be faced with a nonrefundable sales tax for purchases made in Michigan, which in effect will make the tax paid on diesel fuel dependent only upon gallons consumed in Michigan, rather than the location of fuel purchases. While the number of gallons used in Michigan is likely to remain constant or rise (since deliveries and pick-ups must still be made), the location of fuel purchases is in large part an option of the driver or the driver's company. Reportedly, after Michigan's sales tax was increased, some large fleet operators instructed their drivers to cease purchases of fuel in Michigan until the tax climate became more favorable. The bill corrects the unfavorable tax climate because under it all drivers will pay the same amount for gallons used in Michigan.

Supporting Argument

The second problem addressed by the bill involves the loss of revenue caused by IFTA regulations. Under IFTA, the diesel stickers issued by a trucker's home state qualify the licensee to operate in all member states and countries without further requirements in regard to motor fuel taxes. The effect of the IFTA regulation is that this State must honor the diesel sticker of another state, thus precluding Michigan from requiring an out-of-State trucker to purchase a Michigan sticker. Sales of the diesel sticker to out-of-State truckers amounted to approximately $15 million in annual revenue, while sales of in-State stickers totaled approximately $6 million, for a combined total of $21 million. The bill removes the fee for any diesel sticker (though not the requirement that a trucker obtain one), but makes up for the lost revenue through the increase in the diesel fuel tax.

Opposing Argument

The bill does little to address the need of increased funding for crumbling roads. Currently, a trucker who purchases fuel in Michigan pays a 15-cent tax at the pump, with a 6-cent per gallon discount, or 9 cents per gallon tax. The 6% sales tax must be added to that; this would amount to an additional 6 cents per gallon, or 15 cents per gallon total, if fuel cost $1 per gallon. The trucker is liable for 9 cents per gallon consumed in Michigan. Under the bill, truckers will be liable for 21 cents per gallon consumed, or a 12-cent per gallon increase over current charges for consumption. Thus, truckers will pay more per gallon consumed while the State will see a minimal increase in revenue to use for the repair of roads and bridges. In effect, the bill will hurt those who drive the most in the State, likely in-State truckers and small businesses, but do little to fix the roads.

Response: If nothing is done, the State will simply lose the $15 million in decal revenue that had been paid by out-of-State truckers, and probably lose much of the remaining $6 million from in-State sales because truckers likely will obtain their stickers elsewhere at a cheaper rate than $92 per sticker. Further, something must be done to the diesel fuel tax to eliminate the strong disincentive to purchasing fuel in Michigan; that is, the nonrefundable 6-cent per dollar sales tax on diesel fuel should be eliminated. Because many of today's modern trucks can travel up to 1,200 miles on one fill-up, truckers are often at liberty to purchase fuel at the location where the price is lowest. Many of today's modern fleets' home offices are able to determine where the best price per gallon is available and notify their drivers to purchase fuel in a particular state.

By granting the 6-cent per gallon credit for diesel fuel purchases and increasing the tax on diesel fuel gallons consumed, the bill will level the playing field for diesel fuel sellers in Michigan, while recovering the revenue lost from the elimination of the sale of diesel stickers. By placing the burden of the tax solely on gallons consumed in Michigan, rather than on a combination of gallons consumed and sales tax, the bill will tax those who drive the most in the State. This will make the taxation of diesel fuel more equitable, and benefit truck-stop operators in Michigan. The issue of increased funding for road and bridge repair can be addressed in other ways.

Opposing Argument

While it can be argued that the way diesel fuel is taxed needs to be changed, there must be an easier method than that offered by the bill. The 6-cent credit for sales taxes paid per gallon might be difficult for the Department of Treasury to administer.

Legislative Analyst: G. Towne

FISCAL IMPACT

It is estimated that Senate Bill 746 will result in a net revenue gain to the State of $16 million. In FY 1997-98 the changes in the bill will be in effect for the entire year and, as a result, it is estimated that the 12-cent increase in the motor carrier diesel fuel tax will generate $74 million, while the sales tax credit will cost $37 million, for an estimated net revenue gain of $37 million. This revenue increase will be offset partially by the loss of $21 million in decal fees, for an estimated overall net revenue increase of $16 million in FY 1997-98. In FY 1996-97, it is estimated that the bill will result in a net revenue loss of $3 million because the increase in the motor carrier diesel fuel tax will not take effect until April 1, 1997, but the decal fee revenue will be lost for the entire fiscal year. For a detailed analysis, please see the Senate Fiscal Agency Memorandum dated 1-6-97.

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