

AVIATION FUEL TAXES – AMENDMENTS TO STATE AERONAUTICS CODE AND GENERAL SALES TAX ACT

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House Bills 4571 (H-3) & 4572 (H-3)

Sponsor: Rep. Wayne Schmidt

Committee: Transportation

Complete to 12-6-13

SUMMARY OF HOUSE BILLS 4571 & 4572 AS PASSED BY THE HOUSE ON 12-5-13

House Bill 4571 (H-3) would amend Section 203 of the State Aeronautics Code (1945 PA 327) to change the current excise tax on aviation fuels from the current rate of 3 cents per gallon to a tax of *"2% of the average wholesale price on each gallon of aviation jet fuel, aviation gasoline, and fuel sold or used in producing power for propelling aircraft."*

Note that Section 4 of the State Aeronautics Code currently defines "fuel" as *"any gasoline, distillate, benzine, naphtha, benzol, or other volatile and inflammable liquid produced, compounded, and used for propelling aircraft."*

The bill directs the Michigan Department of Treasury to determine the tax rate per gallon quarterly as the product of the average wholesale price of aviation fuels and 2%, rounded up to the nearest 1/10 of one cent. However, the bill would set a floor for the new tax rate of 6 cents per gallon.

The bill would also eliminate the 1 1/2 cent per gallon tax credit currently provided to airline operators who provide proof of scheduled interstate operations.

The H-3 substitute differs from the H-2 Committee substitute in the tax rate percentage – 2% of the average wholesale price in the H-3 substitute, 4% in the Committee substitute. In addition, the floor tax rate, which would be 6 cents per gallon in the H-3 substitute, was set at 12 cents per gallon in the Committee substitute.

House Bill 4572 (H-3) would amend the General Sales Tax Act (1933 PA 167) to partially exempt the sale of aviation gasoline, aviation jet fuel, and [aviation] fuel as defined in Section 4 of the State Aeronautics Code, from the sales tax. The bill would exempt the sale of aviation fuels from the additional 2% sales tax that was established in March 1994. The sales of aviation fuels would still be subject to the sales tax at 4% – this differs from the Committee substitute which would have entirely exempted the sales of aviation fuels from the state sales tax. The H-3 Substitute also provides for a report, by the Michigan Department of Treasury, on loss of School Aid Fund revenue as a result of the bill.

House Bills 4571 and 4572 are tie-barred to each other, meaning neither could take effect unless both are enacted. House Bill 4572 and House Bill 4677 are also tied barred to each other.

Following is a more detailed explanation of House Bill 4571.

House Bill 4571 (H-3)

The bill would amend Section 203 of the State Aeronautics Code (1945 PA 327) to change the current excise tax on aviation fuels from the current rate of 3 cents per gallon to a tax of *"2% of the average wholesale price on each gallon of aviation jet fuel, aviation gasoline, and fuel sold or used in producing power for propelling aircraft."* Section 4 of the State Aeronautics Code currently defines "fuel" as *"any gasoline, distillate, benzine, naphtha, benzol, or other volatile and inflammable liquid produced, compounded, and used for propelling aircraft."*

The bill would add a new Subsection 4 to Section 203 directing the Michigan Department of Treasury (the department) to determine the tax rate per gallon quarterly as the product of the average wholesale price of aviation fuels and 2%, rounded up to the nearest 1/10 of one cent. However, the bill would set a floor for the new tax rate of 6 cents per gallon.

The bill indicates that the *average wholesale price per gallon of fuel* is the same as the average wholesale price per gallon of *aviation gasoline*. The bill would limit average wholesale price adjustment increases or decreases to not more than 1% of the average wholesale price for the previous period [i.e. quarter]. This would appear to limit the quarterly change in the average wholesale price calculation to not more than 1%.

The bill directs the department to publish notice of the quarterly rate no later than the tenth day of the month immediately preceding the month in which the rate is effective.

The bill directs the department to determine the wholesale price of aviation jet fuel, aviation gasoline, and fuel *"based on available wholesale or resale pricing data that best reflect or approximate Michigan rack prices for these fuel types, as reported by the United States Energy Information Administration, the Oil Price Information Service, or any other similar source for such pricing data, whether publicly available or available only by subscription."*

The bill indicates that the department's calculation of the tax rate, the wholesale price, or the average wholesale price is presumed to be correct and is not to be set aside unless found to be clearly erroneous.

The bill sets a floor for the tax rate of 6 cents per gallon.

The bill directs that by January 1, 2014, and every 10 years after 2014, the department complete a study to determine the cost of the changes made as a result of the bill's enactment. The bill directs the department to forward a copy of the study to the Senate and House committees that consider aviation fuel tax legislation.

The bill would not change provisions of current law that require the tax on aviation fuel to be collected and remitted in the same manner and method and at the same time as the gasoline tax under the Motor Fuel Tax Act. Under provisions of the Motor Fuel Tax Act, the tax on gasoline is paid by the fuel "supplier" as defined in the act – most typically, when fuel is delivered to a fuel wholesaler across a fuel rack at the supplier's terminal or refinery.

The bill provides the following definitions:

(a) "aviation gasoline" means fuel that is designed for use in the operation of aircraft other than jet or turbo-prop aircraft and that is sold or used for that purpose.

(b) "aviation jet fuel" means fuel that is designed for use in the operation of jet or turbo-prop aircraft and that is sold or used for that purpose.

(c) "average wholesale price" means the average wholesale price per gallon of aviation jet fuel, aviation gasoline, or fuel as determined by the department based upon a 12-month rolling average of the wholesale price. For purposes of this subdivision, the 12-month rolling average period ends on the last day of the month that is 3 months prior to the month in which the rate is determined by the department under subsection (4).

(d) "department" means the Department of Treasury.

(e) "wholesale price" means the price per gallon of aviation jet fuel, aviation gasoline, or 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. The definition would exclude from the wholesale price the tax imposed by the State Aeronautics Code, the federal excise tax imposed under Section 4081 of the Internal Revenue Code, any other federal tax on fuel, or environmental regulatory protection fees imposed under section 21508 of the Natural Resources and Environmental Protection Act, 1994 PA 451.

(f) "rack" means a mechanism for delivering or removing aviation jet fuel, aviation gasoline, or fuel from a terminal.

FISCAL IMPACT:

House Bill 4571

Section 203 of the State Aeronautics Code currently imposes a 3-cent tax on aviation fuel. The tax generated \$5.0 million in FY 2011-12, and averaged \$5.4 million over the five year period FY 2007-08 through FY 2011-12. Estimated/budgeted revenue for FYs 2012-13 and 2013-14 is \$5.7 million, and \$5.3 million, respectively.

Revenue from "specific taxes" on aviation fuel is dedicated for transportation purposes in Article IX, Section 9 of the 1963 Michigan Constitution. Section 34 of the State Aeronautics Code dedicates revenue from the tax to the State Aeronautics Fund – a state restricted fund used to support state and local aeronautics programs. Specifically, State Aeronautics Fund revenue is used to provide matching funds for the federal Airport Improvement Program, a program of capital assistance to eligible local airports. The State Aeronautics Fund also supports administrative, regulatory, and engineering functions of the Michigan Department of Transportation's Office of Aeronautics.

In addition to revenue from the tax on aviation fuel, the State Aeronautics Fund receives revenue from aircraft registration fees, and an earmark of the Airport Parking Tax revenue.

House Bill 4571 would increase the excise tax on aviation fuel from the current 3-cent per gallon tax to a minimum rate of 6 cents per gallon. The bill would also eliminate the current 1 1/2 cent credit provided to airline operators.

Figures provided by the Michigan Department of Treasury indicate that taxable aviation fuel purchased in Michigan averaged 264.7 million gallons over the five-year period FY 2007-08 through FY 2011-12. Multiplying the minimum 6-cent per gallon tax rate proposed in the bill by the 262.7 million average taxable gallons produces a total of \$15.9 million. This represents a \$10.5 million increase in baseline State Aeronautics Fund revenue as compared to the five-year average of \$5.4 million.

There are a several variables that would determine the actual revenue impact of the bill, including actual aviation fuel gallons purchased in Michigan, and the actual wholesale price of aviation fuels.

House Bill 4572

Exempting sales of aviation fuel from the 2% additional state sales tax established in 1994 would reduce state revenue by an indeterminate amount. The actual amount would depend on the quantity of aviation fuel purchased in Michigan, and the price of aviation fuel subject to the sales tax.

The Michigan Department of Treasury does not track sales tax attributable to sales of aviation fuel and the House Fiscal Agency does not have data on sales tax collections related to the sale of aviation fuel in Michigan.

However, figures provided by the Michigan Department of Treasury indicate an average of 264.7 million taxable gallons of aviation fuel purchased over the five-year period FY 2007-08 through FY 2011-12. Assuming an average sales tax base of \$3.00 per gallon, the sales tax revenue loss attributable to the bill would be \$15.9 million. Since the exemption is of the 2% additional sales tax constitutionally dedicated to the School Aid Fund, the entire \$15.9 million revenue loss would come from the School Aid Fund.

The revenue loss with respect to the School Aid Fund would be replaced with state General Fund revenue under the provisions of House Bill 4677, to which House Bill 4572 is tie-barred. However, the gross state revenue loss under the bills would be \$5.4 million.

The above revenue estimates are based on assumptions regarding the quantity and price of aviation fuel purchased in Michigan. The actual revenue impact will depend on the actual quantity of aviation fuel purchased in Michigan and the price of aviation fuel subject to the sales tax.

See the legislative analysis of House Bill 4677.

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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.