

## REVISE AND INCREASE MOTOR FUEL TAX RATES

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House Bill 5477 (Substitute S-13)

House Bill 5493 (Substitute S-1)

Sponsor: Rep. Rob VerHeulen

House Committee: Transportation and Infrastructure

Senate Committee: Infrastructure Modernization

Complete to 11-17-14

### SUMMARY OF HOUSE BILL 5477 (S-13) AS PASSED BY THE SENATE 11-13-14 AND HOUSE BILL 5493 (S-1) AS PASSED BY THE SENATE 6-11-14

House Bill 5477 (S-13) would amend the Motor Fuel Tax Act (2000 PA 403) to change the current fixed tax rates of 19 cents per gallon for gasoline and 15 cents per gallon for diesel motor fuel to a single motor fuel rate that would change annually through a process defined in the bill. The motor fuel tax rate proposed in the bill would be determined by the Michigan Department of Treasury by multiplying the *average wholesale price* – a defined term in the bill – by the *applicable percentage* – also a defined term in the bill. The computed rate would be rounded up to the nearest 1/10 of 1 cent.

The initial tax rate computed under provisions of the bill would take effect on April 1, 2015, and would be effective for the nine month period ending December 31, 2015. A new rate would be calculated to take effect on January 1, 2016, for the 2016 calendar year. New rates would be calculated to take effect on January 1 of each subsequent year for each applicable calendar year, with the new rate required to be published by the Department not less than 30 days before taking effect.

The use of *applicable percentage* in the bill does not make the tax an *ad valorem* or sales tax. The tax would still be a specific per-gallon motor fuel tax. The *applicable percentage* is simply a factor used to determine a per-gallon specific motor fuel tax rate.

The *applicable percentages* are fixed in the bill, as follows:

- Beginning April 1, 2015: 9.50%
- For the year beginning January 1, 2016: 11.50%
- For the year beginning January 1, 2017: 13.50%
- For the year beginning January 1, 2018 and each calendar year thereafter: 15.50%

While the *applicable percentage* figures would be fixed in the bill as shown above, the other component of the rate calculation, *average wholesale price*, would be variable, within limits established in the bill. As a result, the annual motor fuel tax rate established in the bill would likely change from year to year.

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 as determined for gasoline and diesel motor fuel.

House Bill 5477 (S-13) would require the Department of Treasury, beginning with the rate in effect on April 1, 2015, to publish the notice of the tax rate established under provisions of the bill not later than 30 days prior to the effective date of the rate. The bill states that the department's determination of the average wholesale price, the wholesale price, or the tax rate "shall be presumed to be correct and shall not be set aside unless an administrative tribunal or court of competent jurisdiction finds the department's determination to be clearly erroneous."

### **Definitions**

The bill defines "Average wholesale price" to mean "the statewide average wholesale price of gasoline as determined by the department based upon a 12-month rolling average of the *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 three months prior to the date on which the rate determined under Section 8(1)(c) becomes effective."

The bill defines "Wholesale price" to mean "the price per gallon of self-serve 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, based on available pricing data that best reflect or approximate Michigan rack prices as reported by the United State Energy Administration, the Oil Price Information Service, or a similar nationally recognized source for such pricing data, whether publicly available or available only by subscription." Under the bill's definition, state and federal motor fuel taxes, sales taxes, and regulatory fees would be excluded from the "wholesale price" definition.

After the initial April 1, 2015, *average wholesale price* determination, annual changes in the *average wholesale price* for purposes of the rate calculation, either positive or negative, would be limited to 5% of the immediately preceding year's *average wholesale price*.

### **House Bill 5477 (S-13) – Other Changes**

*Definitions* – House Bill 5477 (S-13) would amend Section 2 to strike a definition of "heating oil" – a defined term which is not actually used anywhere in the act.

*Alternative Fuel Tax Rates* – House Bill 5477 (S-13) would amend Section 8 to strike language that had established differential tax rates for alternative fuels. These provisions are no longer in effect.

*Credit to Fuel Suppliers* – Section 14 of current law allows fuel suppliers to deduct 1.5% of the quantity of gasoline subject to the motor fuel tax "to allow for the cost of collecting the tax." House Bill 5477 (S-13) would reduce this deduction to 1.0%.

*Penalties for Using Dyed Diesel Fuel in Motor Vehicles* – Diesel fuel has a number of uses, such as for generators and other power equipment, in addition to its use as a motor fuel. The Motor Fuel Tax Act provides for the untaxed use of diesel fuel for those uses.

However, untaxed diesel fuel is dyed and the Motor Fuel Tax Act provides penalties for the use of dyed, i.e. untaxed, diesel fuel in motor vehicles. House Bill 5477 (S-13) would amend Section 122 to increase the civil penalty for first-time violations from \$200 to \$1,000. The penalty for second and subsequent violations would remain at \$5,000.

House Bill 5493 (S-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 5477. 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. House Bill 5493 is tie-barred to House Bill 5477.

## **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.<sup>1</sup>

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

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.

Under current law, revenue from the Motor Fuel Tax Act and Motor Carrier Fuel Tax Act is credited to the Michigan Transportation Fund (MTF). After certain deductions for collection, administration, and statutory categorical programs, MTF revenue is distributed in accordance with the provisions of Public Act 51 of 1951 to other state transportation funds and to local road agencies as follows:

- 10.0% to the Comprehensive Transportation Fund (CTF) for public transportation purposes.

Of the MTF balance (after the CTF distribution):

- 39.1% to the State Trunkline Fund (STF) for preservation of the state trunkline highway system and administration of the Michigan Department of Transportation.
- 39.1% to county road commissions for preservation of county road systems.
- 21.8% to city and villages for city and village street preservation programs.

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<sup>1</sup> For a more detailed description of how motor fuel taxes are collected in Michigan, see: [http://www.house.mi.gov/hfa/PDF/Transportation/motor\\_fuel\\_tax\\_rates\\_and\\_collection\\_fiscalforum.pdf](http://www.house.mi.gov/hfa/PDF/Transportation/motor_fuel_tax_rates_and_collection_fiscalforum.pdf)

## FISCAL IMPACT:

The current 19-cent per gallon gasoline tax is estimated to generate \$815.0 million in FY 2014-15; the current 15-cent per gallon diesel motor fuel tax rate is expected to generate \$131.5 million. Estimates of the revenue impacts of House Bills 5477 (S-13) and 5493 (S-1) for FY 2014-15 through FY 2022-23 are shown in Table 1. The estimates are based on current crude oil price projections as well as historical rack and wholesale prices for gasoline.

Initially, as the applicable percentage is phased in, the annual change in the corresponding motor fuel tax relies both on the change in the percentage as well as the average wholesale price of gasoline. By FY 2018-19, when the maximum applicable percentage is fully implemented, only the average wholesale price of gasoline will affect the motor fuel tax rate.

By FY 2017-18, when the applicable percentage reaches the 15.50% maximum, the estimated tax rate for gasoline and diesel is projected to be 41.3 cents per gallon. At these rates, approximately \$1.2 billion more revenue would be generated than under the current tax structure.

Table 1 includes the estimated amounts distributed to the CTF, STF, county road commissions, and city and villages from the new revenue under the current provisions of Public Act 51 of 1951. Note that an increase in MTF revenue would result in an increase in the distribution to these four primary recipients only; it would not result in an increase in collection or administrative costs or in earmarks for any statutory categorical programs. Actual revenues could vary considerably if there are dramatic changes in future oil prices.

Additionally, reducing the deduction allowed for fuel suppliers from 1.5% of the quantity of gasoline subject to the motor fuel tax to 1.0% would increase state restricted transportation revenue by \$4.1 million at the current tax rate of 19 cent per gallon. (This tax expenditure currently equates to \$12.4 million per year.) The amount of increased revenue would increase under the motor fuel tax structure proposed under these bills.

Table 1

**ESTIMATED REVENUE IMPACT OF HB 5477 (S-13) AND 5493 (S-1) AS PASSED BY THE SENATE**  
(Dollar amounts in millions)

	<u>FY2014-15</u>	<u>FY2015-16</u>	<u>FY2016-17</u>	<u>FY2017-18</u>	<u>FY2018-19</u>	<u>FY2019-20</u>	<u>FY2020-21</u>	<u>FY2021-22</u>	<u>FY2022-23</u>
<b>CURRENT LAW ESTIMATES</b>									
Gasoline Tax Revenue	\$815.0	\$811.5	\$808.3	\$805.0	\$801.8	\$798.6	\$795.4	\$792.2	\$789.0
Diesel Tax Revenue	\$131.5	\$132.5	\$134.8	\$136.4	\$138.2	\$139.7	\$141.3	\$143.0	\$144.8
Total Gasoline and Diesel Tax Revenue	\$946.5	\$944.0	\$943.1	\$941.4	\$940.0	\$938.3	\$936.7	\$935.2	\$933.9
<b>ESTIMATED IMPACT OF PROPOSED CHANGES</b>									
Estimated Fiscal Year Tax Rate (Gasoline)	\$0.222	\$0.289	\$0.350	\$0.413	\$0.442	\$0.460	\$0.481	\$0.504	\$0.528
Estimated Fiscal Year Tax Rate (Diesel)	\$0.202	\$0.289	\$0.350	\$0.413	\$0.442	\$0.460	\$0.481	\$0.504	\$0.528
Gasoline Tax Revenue	\$952.3	\$1,234.3	\$1,487.8	\$1,750.9	\$1,865.2	\$1,933.4	\$2,013.6	\$2,101.5	\$2,192.7
Diesel Tax Revenue	\$177.1	\$255.3	\$314.3	\$375.7	\$407.1	\$428.5	\$453.1	\$480.5	\$509.8
Total Gasoline and Diesel Tax Revenue	\$1,129.3	\$1,489.6	\$1,802.2	\$2,126.6	\$2,272.4	\$2,361.9	\$2,466.7	\$2,581.9	\$2,702.5
<b>ESTIMATED CHANGE IN FUEL TAX REVENUE</b>	<b>\$182.8</b>	<b>\$545.6</b>	<b>\$859.1</b>	<b>\$1,185.2</b>	<b>\$1,332.4</b>	<b>\$1,423.6</b>	<b>\$1,530.0</b>	<b>\$1,646.7</b>	<b>\$1,768.6</b>
<b>DISTRIBUTION PER 1951 PA 51</b>									
Comprehensive Transportation Fund	\$18.3	\$54.6	\$85.9	\$118.5	\$133.2	\$142.4	\$153.0	\$164.7	\$176.9
State Trunkline Fund	\$64.3	\$192.0	\$302.3	\$417.1	\$468.9	\$501.0	\$538.4	\$579.5	\$622.4
County Road Commissions	\$64.3	\$192.0	\$302.3	\$417.1	\$468.9	\$501.0	\$538.4	\$579.5	\$622.4
City and Village Road Commissions	\$35.9	\$107.1	\$168.6	\$232.5	\$261.4	\$279.3	\$300.2	\$323.1	\$347.0

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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.