

HOUSE BILL No. 4359

February 28, 2013, Introduced by Rep. Schmidt 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, 6, 8, and 152 (MCL 207.1002, 207.1006, 207.1008, and 207.1152), section 2 as amended by 2002 PA 668 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) "APPLICABLE PERCENTAGE" MEANS 10.1%.

5 (c) "AVERAGE WHOLESALE PRICE" MEANS THE STATEWIDE AVERAGE
6 WHOLESALE PRICE AS DETERMINED BY THE DEPARTMENT BASED UPON A 12-
7 MONTH ROLLING AVERAGE OF THE WHOLESALE PRICE. THE 12-MONTH ROLLING
8 AVERAGE PERIOD ENDS ON THE LAST DAY OF THE MONTH THAT IS 3 MONTHS
9 PRIOR TO THE MONTH IN WHICH THE RATE IS DETERMINED BY THE

1 **DEPARTMENT UNDER SECTION 8(1)(D).**

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

5 (E) ~~(e)~~—"Blended motor fuel" means a mixture of motor fuel and
6 another liquid, other than a de minimis amount of a product
7 including, but not limited to, carburetor detergent or oxidation
8 inhibitor, that can be used as motor fuel in a motor vehicle.

9 (F) ~~(d)~~—"Blender" means and includes any person who produces
10 blended motor fuel outside of the bulk transfer/terminal system.

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

20 (H) ~~(f)~~—"Bulk end user" means a person who receives into the
21 person's own storage facilities by transport truck or tank wagon
22 motor fuel for the person's own consumption.

23 (I) ~~(g)~~—"Bulk plant" means a motor fuel storage and
24 distribution facility that is not a terminal and from which motor
25 fuel may be withdrawn by a tank wagon, a transport truck, or a
26 marine vessel.

27 (J) ~~(h)~~—"Bulk transfer" means a transfer of motor fuel from 1

1 location to another by pipeline tender or marine delivery within
2 the bulk transfer/terminal system, including, but not limited to,
3 all of the following transfers:

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

6 (ii) Pipeline movements of motor fuel from a refinery or
7 terminal to a terminal.

8 (iii) Book transfers of motor fuel within a terminal between
9 licensed suppliers before completion of removal across the terminal
10 rack.

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

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

24 (L) ~~(j)~~—"Carrier" means an operator of a pipeline or marine
25 vessel engaged in the business of transporting motor fuel above the
26 terminal rack.

27 (M) ~~(k)~~—"Commercial motor vehicle" means a motor vehicle

1 licensed **AS A QUALIFIED COMMERCIAL MOTOR VEHICLE** under the motor
2 carrier fuel tax act, 1980 PA 119, MCL 207.211 to 207.234, **OR A**
3 **MOTOR VEHICLE LICENSED UNDER AN INTERNATIONAL FUEL TAX AGREEMENT**
4 **UNDER SECTION 2A OF THE MOTOR CARRIER FUEL TAX ACT, 1980 PA 119,**
5 **MCL 207.212A.**

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

12 (O) ~~(m)~~ "Denaturants" means ~~and includes~~ gasoline, natural
13 gasoline, gasoline components, or toxic or noxious materials added
14 to fuel grade ethanol to make it unsuitable for beverage use but
15 not unsuitable for automotive use.

16 (P) ~~(n)~~ "Department" means the ~~bureau of revenue within the~~
17 department of treasury or its designee.

18 (Q) ~~(e)~~ "Destination state" means ~~the A~~ state, Canadian
19 province or territory, or foreign country to which motor fuel is
20 directed for export.

21 (R) ~~(p)~~ "Diesel fuel" means any liquid other than gasoline
22 that is capable of use as a fuel or a component of a fuel in a
23 motor vehicle that is propelled by a diesel-powered engine or in a
24 diesel-powered train. Diesel fuel includes number 1 and number 2
25 fuel oils, kerosene, dyed diesel fuel, and mineral spirits. Diesel
26 fuel also includes any blendstock or additive that is sold for
27 blending with diesel fuel, any liquid prepared, advertised, offered

1 for sale, sold for use as, or used in the generation of power for
2 the propulsion of a diesel-powered engine, airplane, or marine
3 vessel. An additive or blendstock is presumed to be sold for
4 blending unless a certification is obtained for federal purposes
5 that the substance is for a use other than blending for diesel
6 fuel. Diesel fuel does not include an excluded liquid.

7 (S) ~~(q)~~ "Dyed diesel fuel" means diesel fuel that is dyed in
8 accordance with internal revenue service rules or pursuant to any
9 other internal revenue service requirements, including any
10 invisible marker requirements.

11 (T) ~~(r)~~ "Eligible purchaser" means a person who has been
12 authorized by the department under section 75 to make ~~the~~ ~~AN~~
13 election under section 74.

14 (U) ~~(s)~~ "Excluded liquid" means that term as defined in 26
15 ~~C.F.R.~~ ~~CFR~~ 48.4081-1.

16 (V) ~~(t)~~ "Export" means to obtain motor fuel in this state for
17 sale or other distribution outside of this state. Motor fuel
18 delivered outside of this state by or for the seller constitutes an
19 export by the seller and motor fuel delivered outside of this state
20 by or for the purchaser constitutes an export by the purchaser.

21 (W) ~~(u)~~ "Exporter" means a person who exports motor fuel.

22 Sec. 6. As used in this act:

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

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

1 state.

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

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

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

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

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

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

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

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

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

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

27 (i) The transaction includes a transfer from the person who

1 holds the original inventory position for motor fuel in the
2 terminal as reflected in the records of the terminal operator.

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

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

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

12 (K) "WHOLESALE PRICE" MEANS THE PRICE PER GALLON OF UNLEADED
13 REGULAR GASOLINE CHARGED BY A LICENSED SUPPLIER TO A PURCHASER AT
14 THE TIME OF REMOVAL FROM A TERMINAL ACROSS THE RACK, AS DETERMINED
15 BY THE DEPARTMENT. WHOLESALE PRICE DOES NOT INCLUDE THE TAX IMPOSED
16 BY THIS ACT, PREPAID SALES TAX UNDER SECTION 6A OF THE GENERAL
17 SALES TAX ACT, 1933 PA 167, MCL 205.56A, FEDERAL EXCISE TAX UNDER
18 SECTION 4081 OF THE INTERNAL REVENUE CODE, 26 USC 4081, ANY OTHER
19 FEDERAL TAX UPON MOTOR FUEL, OR AN ENVIRONMENTAL PROTECTION
20 REGULATORY FEE IMPOSED UNDER SECTION 21508 OF THE NATURAL RESOURCES
21 AND ENVIRONMENTAL PROTECTION ACT, 1994 PA 451, MCL 324.21508.

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

26 Sec. 8. (1) ~~Subject~~ **EXCEPT AS OTHERWISE PROVIDED IN THIS ACT**
27 **AND SUBJECT** to the exemptions provided ~~for~~ in this act, tax is

1 imposed on motor fuel imported into or sold, delivered, or used in
2 this state at the following rates:

3 (a) Except as otherwise provided in ~~subdivision~~ **SUBDIVISIONS**
4 (c) **AND (D)**, 19 cents per gallon on gasoline.

5 (b) Except as otherwise provided in ~~subdivision (d)~~,
6 **SUBDIVISIONS (C) AND (D)**, 15 cents per gallon on diesel fuel.

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

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

21 (C) **SUBJECT TO SUBDIVISION (D), BEGINNING ON THE EFFECTIVE**
22 **DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBDIVISION, 12% OF THE**
23 **WHOLESALE PRICE AS CALCULATED BY THE DEPARTMENT ON THE EFFECTIVE**
24 **DATE OF THE AMENDATORY ACT THAT ADDED THIS SENTENCE.**

25 (D) **BEGINNING THE FIRST DAY OF THE SECOND CALENDAR QUARTER**
26 **FOLLOWING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS**
27 **SENTENCE, THE RATE PER GALLON ON MOTOR FUEL SHALL BE DETERMINED BY**

1 THE DEPARTMENT ON A QUARTERLY BASIS. THE RATE SHALL BE EQUAL TO THE
2 PRODUCT OF THE AVERAGE WHOLESALE PRICE AND THE APPLICABLE
3 PERCENTAGE, ROUNDED UP TO THE NEAREST 1/10 OF 1 CENT.

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

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

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

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

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

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

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

26 (d) That the tax imposed by this act be collected and paid at
27 those times, in the manner, and by those persons specified in this

1 act.

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

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

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

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

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

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

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

10 ~~—— (9) A refund request shall be filed within 60 days after the~~
11 ~~last day of the month in which the amendatory act that added this~~
12 ~~subsection took effect. A taxpayer shall provide documentation that~~
13 ~~the department requires in order to verify the request for refund.~~
14 ~~A person who may claim a refund under subsection (8) shall do all~~
15 ~~of the following to claim the refund:~~

16 ~~—— (a) Not later than 12 a.m. on the effective date of the~~
17 ~~amendatory act that added this subsection, take an inventory of~~
18 ~~gasoline containing at least 70% ethanol or undyed diesel fuel~~
19 ~~containing at least 5% biodiesel.~~

20 ~~—— (b) Deduct 3,000 gallons if the person claiming the refund is~~
21 ~~an end user.~~

22 ~~—— (c) Deduct the number of gallons in dead storage if the~~
23 ~~gasoline containing at least 70% ethanol or the undyed diesel fuel~~
24 ~~containing at least 5% biodiesel is held for subsequent sale.~~

25 ~~—— (10) Beginning on the effective date of the amendatory act~~
26 ~~that added this subsection, the state treasurer shall annually~~
27 ~~determine, for the 12-month period ending May 1 and for any~~

~~1 additional times that the treasurer may determine, the difference
2 between the amount of motor fuel tax collected and the amount of
3 motor fuel tax that would have been collected but for the
4 differential rates on gasoline pursuant to subsection (1)(c) and
5 biodiesel pursuant to subsection (1)(d). Subsection (1)(c) and (d)
6 is no longer effective the earlier of 10 years after the effective
7 date of the amendatory act that added this subsection or the first
8 day of the first month that is not less than 90 days after the
9 state treasurer certifies that the total cumulative rate
10 differential from the effective date of this amendatory act is
11 greater than \$2,500,000.00.~~

~~12 ——— (11) The legislature shall annually appropriate to the
13 Michigan transportation fund created in 1951 PA 51, MCL 247.651 to
14 247.675, the amount determined as the rate differential certified
15 by the state treasurer for the 12 month period ending on May 1 of
16 the calendar year in which the fiscal year begins. Subsection
17 (1)(c) and (d) shall not be effective beginning January of any
18 fiscal year for which the appropriation required under this
19 subsection has not been made by the first day of the fiscal year.~~

~~20 ——— (12) As used in this section:~~

~~21 ——— (a) "Biodiesel" means a fuel composed of mono alkyl esters of
22 long chain fatty acids derived from vegetable oils or animal fats
23 and, in accordance with standards specified by the American society
24 for testing and materials, designated B100 and meeting the
25 requirements of D 6751, as approved by the department of
26 agriculture.~~

~~27 ——— (b) "Ethanol" means denatured fuel ethanol that is suitable~~

1 ~~for use in a spark ignition engine when mixed with gasoline so long~~
2 ~~as the mixture meets the American society for testing and materials~~
3 ~~D-5798 specifications.~~

4 (8) THE DEPARTMENT SHALL PUBLISH NOTICE OF THE APPLICABLE TAX
5 RATE CALCULATED UNDER SUBSECTION (1) (D) NOT LATER THAN 30 DAYS
6 BEFORE THE EFFECTIVE DATE OF THE RATE.

7 (9) A DEPARTMENTAL DETERMINATION OF THE APPLICABLE PERCENTAGE,
8 THE AVERAGE WHOLESALE PRICE, THE WHOLESALE PRICE, OR THE RATE UNDER
9 SUBSECTION (1) (D) BY THE DEPARTMENT IS PRESUMED TO BE CORRECT AND
10 WILL NOT BE SET ASIDE UNLESS AN ADMINISTRATIVE TRIBUNAL OR A COURT
11 OF COMPETENT JURISDICTION FINDS THE DEPARTMENT'S DETERMINATION TO
12 BE CLEARLY ERRONEOUS.

13 Sec. 152. (1) ~~A~~ EXCEPT AS PROVIDED IN SUBSECTIONS (3) AND (4),
14 tax at a rate of 15 cents per gallon is imposed upon all liquefied
15 petroleum gas used in this state. The tax shall be paid at the
16 times and in the manner specified in this section. The tax on
17 liquefied petroleum gas fuel sold or delivered either by placing
18 into a permanently attached fuel supply tank on a motor vehicle, or
19 exchanging or replacing the fuel supply tank of a motor vehicle,
20 shall be collected by the LPG dealer from the purchaser and paid
21 ~~ever quarterly~~ to the department **QUARTERLY** as provided in this act.
22 Liquefied petroleum gas fuel delivered in this state into the
23 storage facility of any person when the exclusive purpose of the
24 storage facility is for resale or use in a motor vehicle on the
25 public roads or highways of this state, shall, upon delivery to
26 storage facility, be subject to tax. An LPG dealer shall, upon
27 delivery of the liquefied petroleum gas, collect and remit the tax

1 to the department as provided in this act.

2 (2) A person shall not operate a motor vehicle on the public
3 roads or highways of this state from the cargo containers of a
4 truck, trailer, or semitrailer with liquefied petroleum gas in
5 vapor or liquid form, except when the fuel in the liquid or vapor
6 phase is withdrawn from the cargo container for use in motor
7 vehicles through a permanently installed and approved metering
8 device. The tax on liquefied petroleum gas withdrawn from a cargo
9 container through a permanently installed and approved metering
10 device shall ~~apply~~ **BE APPLIED** in accordance with measured gallons
11 as reflected by meter reading, and shall be paid quarterly by the
12 LPG dealer to the department as provided in this act.

13 (3) **SUBJECT TO SUBSECTION (4), BEGINNING ON THE FIRST DAY OF**
14 **THE FIRST CALENDAR QUARTER FOLLOWING THE EFFECTIVE DATE OF THE**
15 **AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE TAX DESCRIBED IN**
16 **SUBSECTIONS (1) AND (2) SHALL BE IMPOSED AT A RATE EQUAL TO THE**
17 **RATE PER GALLON FOR MOTOR FUEL UNDER SECTION 8(1)(C).**

18 (4) **BEGINNING ON THE FIRST DAY OF THE SECOND CALENDAR QUARTER**
19 **FOLLOWING THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS**
20 **SUBSECTION, THE TAX DESCRIBED IN SUBSECTIONS (1) AND (2) SHALL BE**
21 **IMPOSED AT A RATE EQUAL TO THE RATE PER GALLON FOR MOTOR FUEL**
22 **ESTABLISHED UNDER SECTION 8(1)(D).**

23 Enacting section 1. This amendatory act takes effect on the
24 first day of the first calendar quarter following the date of its
25 enactment.