

Legislative Analysis



MOTOR CARRIER FUEL TAX ACT: JOINT AND SEVERAL LIABILITY

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House Bill 5920 as introduced
Sponsor: Rep. Jerry O. Kooiman
Committee: Transportation

Complete to 6-29-04

A SUMMARY OF HOUSE BILL 5920 AS REPORTED FROM COMMITTEE 6-24-04

The bill would amend Section 8 of the Motor Carrier Fuel Tax Act (Public Act 119 of 1980) by striking Subsection 4, language which currently makes the lessors and lessees of qualified commercial motor vehicles jointly and severally liable for taxes due under the act.

FISCAL IMPACT:

The Michigan Department of Treasury has expressed concern that by striking the joint and several liability provisions of current law, the bill could make it more difficult to collect taxes due under the Motor Carrier Fuel Tax Act, particularly when a party with primarily responsibility for the tax under terms of a lease agreement fails to discharge its tax liability. A reduction in taxes collected under the act would result in a reduction in state-restricted Michigan Transportation Fund revenue. However, the amount of any revenue reduction which might be result from the bill can not be reasonably estimated.

BACKGROUND INFORMATION:

As stated in its title, the Motor Carrier Fuel Tax Act prescribes a privilege tax for use of state public roads and highways by motor carriers. The tax is 15 cents per gallon of motor fuel consumed on public roads and highways in Michigan. If a motor carrier does not maintain records of actual fuel consumption, the act provides for a presumptive consumption rate of one gallon consumed for each four miles traveled. Revenue from this tax is credited to the Michigan Transportation Fund (MTF). For the 12 months ending March 31, 2004, the Motor Carrier Fuel Tax generated \$34.5 million in revenue for the MTF.

The act defines "motor carrier" as a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and at least one other state or Canadian province, or is a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in this state and who is licensed under the International Fuel Tax Agreement (IFTA). This definition excludes

motor carriers who operate only in Michigan; effectively the tax applies only to interstate motor carriers who pay motor carrier fuel use taxes under IFTA.¹

A motor carrier operating a commercial motor vehicle as defined by the act is not always the vehicle owner. The motor carrier operator can be a lessee, leasing the vehicle from a leasing company (the lessor). Section 8 of the act indicates that a qualified commercial motor vehicle leased to a motor carrier is subject to the act to the same extent and in the same manner as commercial motor vehicles owned by a motor carrier.

The act also indicates that a lessor may be considered a motor carrier (and thus responsible for payment of taxes under the act) if it supplies or pays for the motor fuel used in the vehicle, or if the rental or other charges include the cost of motor fuel. In addition, the act excuses a lessee motor carrier from filing reports for a qualified commercial motor vehicle if the vehicle is leased from a lessor who is a motor carrier and the lease agreement requires the lessor to pay the cost of motor fuel and motor fuel taxes.

In effect, the Motor Carrier Fuel Tax Act allows parties to a commercial motor vehicle lease agreement to determine which party, lessor or lessee, has primary tax liability under the act. In practice, lease terms often establish whether the lessor or lessee is primarily responsible for reporting and payment of taxes due under the act. Full service leasing companies may provide IFTA tax reporting on behalf of lessees based on trip and fuel purchase information submitted by the lessee. In other cases, the operator/lessee assumes full responsibility for IFTA tax filing.

Nonetheless, Section 8, Subsection 4 of the act establishes joint and several liability for taxes due under the act, regardless of which party is primarily responsible for tax compliance under terms of the lease. Thus if a lessee were responsible for compliance with the act under terms of a lease agreement, but failed to discharge its tax liability, the Michigan Department of Treasury could try to collect from the lessor. Conversely, if a lessor failed to discharge its tax liability under the act, even if obligated to do so under terms of a lease agreement, the department could attempt to collect from the lessee.²

Note that Section 8, including the joint and several liability provisions, has been a part of the Motor Carrier Fuel Tax Act since the statute was first enacted in 1980, prior to the adoption of ITFA. Section 2a of the act indicates that if provisions of the act conflict with provisions of the international fuel tax agreement, provisions of IFTA shall apply.

¹ The International Fuel Tax Agreement provides for reciprocal collection of motor carrier fuel taxes among the forty-eight contiguous states and nine Canadian provinces. As a result, Michigan's Motor Carrier Fuel Tax is collected by both the Michigan Department of Treasury and other states and Canadian provinces through IFTA tax filings. Beginning April 1, 2003, the effective date of a 2002 amendment to the act (Public Act 667 of 2002), Michigan-only (intrastate) motor carriers are exempt from the Motor Carrier Fuel Tax Act, and instead pay motor fuel taxes exclusively "at the pump" under the Motor Fuel Tax Act (PA 403 of 2000).

² Section 6a of the Motor Carrier Fuel Tax Act indicates that taxes due other IFTA-member jurisdictions by persons licensed by the Michigan Department of Treasury under IFTA are considered a tax imposed by the act. As a result, the joint and several liability standard would appear to also apply to taxes collected by Michigan for other states and Canadian provinces through IFTA filings of Michigan licensed motor carriers.

The IFTA Articles of Agreement address fuel use tax liability under rental or lease agreements for commercial motor vehicles. Article V, Section R510.100 indicates that for short-term rentals (29 days or less) the lessor is responsible for fuel tax reporting and payment if the lessor is regularly engaged in the business of leasing, or renting vehicles without drivers, except when each of two additional conditions is met: the lessor has written rental contract which designates the lessee as the party responsible for reporting and paying the fuel use tax; and the lessor has a copy of the lessee's IFTA fuel tax license which is valid for the term of the rental.

Article V, Section R530.200 provides that in the case of a carrier using independent contractors under long-term leases (30 days or more), the lessor and lessee have the option of designating which party will report and pay fuel use tax. This section indicates that in the absence of a written agreement or contract, or if the document is silent regarding responsibility for reporting and paying fuel use tax, the lessee is responsible for reporting and paying fuel use tax. The section also states that if the lessee (carrier) through a written agreement or contract assumes responsibility for reporting and paying fuel use taxes, the base jurisdiction for IFTA reporting is the lessee's base jurisdiction, regardless of the jurisdiction in which the lessor had registered the qualified motor vehicle.

Article V, Section R340 of the IFTA Articles of Agreement allows a base jurisdiction to require, for cause, a licensee to post a bond. The section indicates that bonds may be required for failure to file timely returns or to remit taxes, or when an audit indicates problems severe enough that, in the opinion of the base jurisdiction, a bond is required to protect the interests of the member jurisdictions. A similar provision is contained in Section 5 of the Motor Carrier Fuel Tax Act.

ARGUMENTS:

For:

In testimony, supporters of the bill focused on how current law affects lessors (as opposed to lessees). They indicated that the current joint and several liability provisions of the Motor Carrier Fuel Tax Act impose an unfair contingent tax liability on lessors when lessees fail to pay taxes. They argued that lessors should not be held responsible for taxes owed by lessees who are not under the lessors' control or supervision. They also argue that Michigan is one of only 10 states that impose joint and several tax liability on lessors and lessees and that this puts Michigan-based leasing companies at a competitive disadvantage with companies based in states which do not impose joint and several tax liability. Supporters of the bill also argue that joint and several liability provisions are contrary to the IFTA Articles of Agreement.

Against:

The Michigan Department of Treasury indicates that leases for commercial motor vehicles are unusual in that they can transfer tax liability from one party to another. However, the department is not a party to these leases and does not have the ability to

review them. Without the joint and several liability provisions of current law, the department is faced with the problem of trying to identify the responsible taxpayer. Furthermore, the department believes that joint and several liability provisions cause lessors to be more vigilant in ensuring that lessees comply with the act. The records necessary to document tax compliance (mileage and fuel purchase records) are identical to records generally required under lease agreements. The department does not believe the joint and several liability provisions are in conflict with IFTA.

POSITIONS:

Mack Lease of Detroit supports the bill (6-3-04)

Star Truck Rentals Inc. supports the bill (6-17-04)

The Car and Truck Rental and Leasing Assn. of Michigan supports the bill (6-17-04)

Michigan Trucking Association supports the bill (6-17-04)

The Michigan Department of Treasury opposes the bill (6-17-04)

The Michigan Department of Transportation opposes the bill (6-17-04)

Fiscal Analyst: William Hamilton

■ 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.