

QUALIFIED FUEL TAX RECIPROcity AGREEMENTS

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House Bills 4976 (H-2), 4977 (H-2), and 4978 (H-2) as reported

Sponsor: Rep. Gregory Markkanen

Committee: Transportation

Complete to 11-3-21

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Acts 24, 25, and 26 of 2022)

SUMMARY:

House Bills 4976, 4977, and 4978 would respectively amend the Streamlined Sales and Use Tax Revenue Equalization Act, 1960 PA 124 (which created the Michigan Highway Reciprocity Board), and the Motor Carrier Fuel Tax Act to provide for qualified fuel tax reciprocity agreements between Michigan and certain other states.

House Bill 4977 would amend 1960 PA 124 to allow the Department of Treasury to enter into *qualified fuel tax reciprocity agreements* with the proper authorities of other *jurisdictions* (either individually or with a group of jurisdictions) if the Department of Treasury considers the agreements proper or expedient and in the interests of the people of Michigan. The bill would provide the Department of Treasury with the sole authority to enter into qualified fuel tax reciprocity agreements.

Qualified fuel tax reciprocity agreement would mean a compact, agreement, or arrangement that, in exchange for reciprocal treatment for a *motor carrier* or a class or category of motor carrier from this state in another jurisdiction, allows a motor carrier or a class or category of motor carrier from the other jurisdiction to operate or cause to be operated a *qualified commercial motor vehicle* on a public highway in Michigan for the purpose of carrying *raw forest products* to a sawmill or factory within 30 air miles of the border of Michigan without doing any of the following:

- Carrying, obtaining, or displaying a license, decal, permit, or other credentials otherwise required by the *International Fuel Tax Agreement* (IFTA) or the Motor Carrier Fuel Tax Act.
- Paying, reporting, or filing returns for, taxes imposed by or subject to the International Fuel Tax Agreement, the Motor Carrier Fuel Tax Act, or section 5 of the Streamlined Sales and Use Tax Revenue Equalization Act.

Motor carrier would mean a person who operates or causes to be operated a qualified commercial motor vehicle on a public road or highway in Michigan and at least one other state.

Qualified commercial motor vehicle would mean a motor vehicle that is used, designed, or maintained to transport people or property and that meets one of the following:

- It has three or more axles, regardless of weight.
- It has two axles and a gross vehicle weight or registered gross vehicle weight of more than 26,000 pounds or 12,000 kilograms.

- It is used in a combination of vehicles, if the weight of that combination is more than 26,000 pounds or 12,000 kilograms gross vehicle or registered gross vehicle weight.

Raw forest products would mean logs, pilings, posts, poles, cordwood products, wood chips, sawdust, pulpwood, intermediary lumber, fuel wood, and Christmas trees that are not altered by a manufacturing process off the land, sawmill, or factory from which they are taken and are not finished products suitable for sale at retail.

International Fuel Tax Agreement would mean the agreement described in section 2a of the Motor Carrier Fuel Tax Act.

Jurisdiction would mean other states of the United States that share a common border with Michigan and are members of the International Fuel Tax Agreement.

MCL 3.161 and MCL 3.163

House Bill 4976 would amend the Streamlined Sales and Use Tax Revenue Equalization Act to provide that section 5 of the act does not apply to an interstate motor carrier to the extent that the interstate motor carrier is exempt from the requirements of this section under a ***qualified fuel tax reciprocity agreement*** as defined in HB 4977.

MCL 205.175

House Bill 4978 would amend the Motor Carrier Act to provide that the act does not apply to a qualified commercial motor vehicle owned by, or leased and operated by, a motor carrier to the extent that the motor carrier is exempt from the requirements of the act under a ***qualified fuel tax reciprocity agreement*** as defined in HB 4977. In addition, the IFTA would not apply to such a qualified commercial motor vehicle.

MCL 207.213

House Bills 4976 and 4978 are tie-barred to House Bill 4977, which means that neither bill could take effect unless House Bill 4977 were also enacted.

BACKGROUND:

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 for both gasoline and diesel motor fuel is 26.3 cents per gallon. Although collected by the Department of Treasury upstream from motor fuel suppliers as defined in the Motor Fuel Tax Act, the motor fuel tax is included in the at-the-pump price paid by motorists at retail service stations 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 section 9 of Article IX of the Michigan Constitution of 1963.

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 and cross-border motor carriers who may, or may not, actually purchase fuel in Michigan. Section 2a of the Motor Carrier Fuel Tax Act authorizes the Department of Treasury to enter into reciprocity agreements with other states (and Canadian provinces) for the imposition of motor fuel taxes. This apportionment of state and provincial motor fuel taxes is put into effect through the IFTA.¹

Because Michigan also imposes a 6% sales tax on motor fuel purchases, section 5 of the Streamlined Sales and Use Tax Revenue Equalization Act provides for the imposition of a specific per-gallon tax on diesel motor fuel consumed in Michigan by interstate and cross-border motor carriers. This tax is a variable tax rate calculated from the 6% sales tax as applied to the average retail price of diesel motor fuel. This tax is also apportioned to states and Canadian provinces based on miles driven in each jurisdiction through IFTA.

As a result of the Motor Carrier Fuel Tax Act and section 5 of the Streamlined Sales and Use Tax Revenue Equalization Act, interstate and cross-border motor carriers effectively all pay the same tax rate for fuel consumed in Michigan (based on mileage driven in Michigan) whether or not they actually purchase fuel in Michigan.

Under current law, revenue from the Motor Fuel Tax Act and Motor Carrier Fuel Tax Act, and from section 5 of the Streamlined Sales and Use Tax Revenue Equalization Act, is credited to the Michigan Transportation Fund (MTF). After certain deductions for collection, administration, and certain statutory or categorical programs, MTF revenue is distributed in accordance with the provisions of 1951 PA 51 to other state transportation funds and to local road agencies.

Highway Reciprocity Board

The Highway Reciprocity Board, as established in 1960 PA 124, consisted in the secretary of state, the state highway commissioner, and the chairman of the Michigan public service commission. The act gave authority to the board to “enter into and make such reciprocal compacts, agreements or arrangements as the board deems proper or expedient [...] with the proper authorities of other jurisdictions [...] concerning the fees, charges, taxation, operation and regulation of trucks, tractors, trailers, automobiles, buses, and all other automotive equipment engaged in international, interstate or intrastate commerce upon and over the public highways.”

1960 PA 124 was enacted prior to Michigan’s 1963 constitution. Section 2 of Article V of that constitution generally required that all executive and administrative functions of the executive branch of state government be allocated among and within not more than 20 principal departments. This provision limited the authority of independent boards, agencies, and commissions. In effect, all state agencies had to be housed within a state department, and the constitution limited the number of state departments to 20.

¹ <https://www.iftach.org/>

Executive Order 2007-15 abolished the Highway Reciprocity Board and transferred all of the “authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds of the Highway Reciprocity Board” to the Department of State, effective July 15, 2007.²

Note that House Bill 4977 does not resurrect the Highway Reciprocity Board as originally established in 1960 PA 124. Instead, the bill would amend the act to conform to Executive Order 2007-15 by changing the definition of *board* from meaning the Michigan Highway Reciprocity Board to meaning the Department of State.

FISCAL IMPACT:

As described above, the bill package would allow the Department of Treasury to negotiate fuel tax reciprocity agreements with other states specific to motor carriers carrying raw forest products within 30 miles of this state. This class of motor carriers would be exempt from reporting normally required of cross-border or interstate motor carriers under the IFTA.

In FY 2019-20, total MTF revenue was \$3.2 billion, of which revenue from the motor fuel tax on diesel, from both IFTA and in-state-only usage, totaled \$230.0 million. It is reasonable to assume that the bulk of diesel motor fuel tax revenue is attributable to trucks and truck-trailer combinations operating on the major interstate corridors, such as I-94, I-75, and I-69.

Although the impact of the bill package on state revenue cannot be readily quantified, we conclude that the impact would be relatively minor. As of May 2018, there were 3,335 trucks with Michigan log-truck registrations. A significant number of these vehicles are not currently required to participate in IFTA because they do not engage in interstate or cross-border commerce or do not exceed 26,000 pounds gross vehicle weight (either alone or in combination with another vehicle), or both.

In addition, representatives of the Michigan timber industry indicate that, depending on the size of the operation, timber haulers generally have fuel delivered in bulk to their base locations or purchase fuel at retail near their home base. In either case, motor fuel taxes would have been included in the retail price and effectively paid “at the pump” in the home base state.

² https://www.michigan.gov/formergovernors/0,4584,7-212-96477_57648_21975-167757--,00.html

It is not clear when the Highway Reciprocity Board last met. Its functions were largely made irrelevant after Michigan joined the International Registration Plan (IRP) in 1985 and the IFTA in the 1996. The IRP is a cooperative program of registration reciprocity for certain types of vehicles operating in two or more member jurisdictions, i.e., vehicles engaged in interstate, inter-province, or cross-border commerce among states and Canadian provinces. The IRP provides for apportioning vehicle registration taxes among those states and provinces based on miles driven in each jurisdiction. Vehicles subject to the IRP include the truck-trailer combinations frequently seen on interstate or cross-border commercial corridors such as I-94, I-69, and I-75.

Finally, we note that the bills are permissive in authorizing the Department of Treasury to negotiate fuel tax reciprocity agreements. The department is not required to enter into such agreements.

POSITIONS:

Representatives of the following entities testified in support of the bills (9-28-21):

- Great Lakes Timber Professionals Association
- Holli Forest Products
- Michigan Association of Timbermen

The Department of Treasury indicated support for the bills. (10-19-21)

Fiscal Analyst: William E. Hamilton

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.