

HOUSE BILL NO. 5971

March 24, 2022, Introduced by Reps. Glenn, Steven Johnson, Bellino and Hoytenga and referred to the Committee on Tax Policy.

A bill to amend 2000 PA 403, entitled "Motor fuel tax act," by amending sections 2, 3, and 8 (MCL 207.1002, 207.1003, and 207.1008), as amended by 2015 PA 176.

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) "Blendstock" means ~~and includes~~ any petroleum product
- 5 component of motor fuel, such as naphtha, reformate, or toluene; or

1 any oxygenate that can be blended for use in a motor fuel.

2 (c) "Blended motor fuel" means a mixture of motor fuel and
3 another liquid, other than a de minimis amount of a product
4 including, but not limited to, carburetor detergent or oxidation
5 inhibitor, that can be used as motor fuel in a motor vehicle.

6 (d) "Blender" means ~~and includes~~ any person ~~who~~ **that** produces
7 blended motor fuel outside of the bulk transfer/terminal system.

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

17 (f) "Bulk end user" means a person who receives into the
18 person's own storage facilities by transport truck or tank wagon
19 motor fuel for the person's own consumption.

20 (g) "Bulk plant" means a motor fuel storage and distribution
21 facility that is not a terminal and from which motor fuel may be
22 withdrawn by a tank wagon, a transport truck, or a marine vessel.

23 (h) "Bulk transfer" means a transfer of motor fuel from 1
24 location to another by pipeline tender or marine delivery within
25 the bulk transfer/terminal system, including, but not limited to,
26 all of the following transfers:

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

29 (ii) Pipeline movements of motor fuel from a refinery or

1 terminal to a terminal.

2 (iii) Book transfers of motor fuel within a terminal between
3 licensed suppliers before completion of removal across the terminal
4 rack.

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

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

18 (j) "Carrier" means an operator of a pipeline or marine vessel
19 engaged in the business of transporting motor fuel above the
20 terminal rack.

21 (k) "Commercial motor vehicle" means a motor vehicle licensed
22 as a qualified commercial motor vehicle under the motor carrier
23 fuel tax act, 1980 PA 119, MCL 207.211 to 207.234, or a motor
24 vehicle licensed under an international fuel tax agreement under
25 section 2a of the motor carrier fuel tax act, 1980 PA 119, MCL
26 207.212a.

27 ~~(l) "Consumer price index" means United States consumer price~~
28 ~~index for all urban consumers as defined and reported by the United~~
29 ~~States Department of Labor, Bureau of Labor Statistics.~~

1 **(l)** ~~(m)~~—"Dead storage" is the amount of motor fuel that cannot
2 be pumped out of a motor fuel storage tank because the motor fuel
3 is below the mouth of the tank's draw pipe. The amount of motor
4 fuel in dead storage is 200 gallons for a tank with a capacity of
5 less than 10,000 gallons and 400 gallons for a tank with a capacity
6 of 10,000 gallons or more.

7 **(m)** ~~(n)~~—"Denaturants" means gasoline, natural gasoline,
8 gasoline components, or toxic or noxious materials added to fuel
9 grade ethanol to make it unsuitable for beverage use but not
10 unsuitable for automotive use.

11 **(n)** ~~(o)~~—"Department" means the department of treasury or its
12 designee.

13 **(o)** ~~(p)~~—"Destination state" means a state, Canadian province
14 or territory, or foreign country to which motor fuel is directed
15 for export.

16 **(p)** ~~(q)~~—"Diesel fuel" means any liquid other than gasoline
17 that is capable of use as a fuel or a component of a fuel in a
18 motor vehicle that is propelled by a diesel-powered engine or in a
19 diesel-powered train. Diesel fuel includes number 1 and number 2
20 fuel oils, kerosene, dyed diesel fuel, and mineral spirits. Diesel
21 fuel also includes any blendstock or additive that is sold for
22 blending with diesel fuel, any liquid prepared, advertised, offered
23 for sale, sold for use as, or used in the generation of power for
24 the propulsion of a diesel-powered engine, airplane, or marine
25 vessel. An additive or blendstock is presumed to be sold for
26 blending unless a certification is obtained for federal purposes
27 that the substance is for a use other than blending for diesel
28 fuel. Diesel fuel does not include an excluded liquid.

29 **(q)** ~~(r)~~—"Dyed diesel fuel" means diesel fuel that is dyed in

1 accordance with ~~internal revenue service~~ **Internal Revenue Service**
2 rules or pursuant to any other ~~internal revenue service~~ **Internal**
3 **Revenue Service** requirements, including any invisible marker
4 requirements.

5 (r) ~~(s)~~—"Eligible purchaser" means a person who has been
6 authorized by the department under section 75 to make an election
7 under section 74.

8 (s) ~~(t)~~—"Excluded liquid" means that term as defined in 26 CFR
9 48.4081-1.

10 (t) ~~(u)~~—"Export" means to obtain motor fuel in this state for
11 sale or other distribution outside of this state. Motor fuel
12 delivered outside of this state by or for the seller constitutes an
13 export by the seller and motor fuel delivered outside of this state
14 by or for the purchaser constitutes an export by the purchaser.

15 (u) ~~(v)~~—"Exporter" means a person who exports motor fuel.

16 Sec. 3. As used in this act:

17 (a) "Fuel feedstock user" means a person who receives motor
18 fuel for the person's own use in the manufacture or production of
19 any substance other than motor fuel.

20 (b) "Fuel grade ethanol" means the American Society for
21 Testing and Materials standard in effect on April 1, 2001 as the D-
22 4806 specification for denatured fuel grade ethanol for blending
23 with gasoline.

24 (c) "Fuel transportation vehicle" means a vehicle designed or
25 used to transport motor fuel on the public roads or highways. Fuel
26 transportation vehicle includes, but is not limited to, a transport
27 truck and a tank wagon. Fuel transportation vehicle does not
28 include a vehicle transporting a nurse tank or limited volume
29 auxiliary-mounted supply tank used for fueling an implement of

1 husbandry.

2 (d) "Gallon" means a unit of liquid measure as customarily
3 used in the United States containing 231 cubic inches, or 4 quarts,
4 or its metric equivalent expressed in liters. Where the term gallon
5 appears in this act, the term liters is interchangeable ~~so long as~~
6 **if** the equivalence of a gallon and 3.785 liters is preserved. A
7 quantity required to be furnished under this act may be specified
8 in liters ~~when~~ **if** authorized by the department.

9 (e) "Gasohol" means a blended motor fuel composed of gasoline
10 and fuel grade ethanol.

11 (f) "Gasoline" means gasoline, alcohol, gasohol, casing head
12 or natural gasoline, benzol, benzine, naphtha, and any blendstock
13 additive, or other product including methanol that is sold for
14 blending with gasoline or for use on the road other than products
15 typically sold in containers of less than 5 gallons. Gasoline also
16 includes a liquid prepared, advertised, offered for sale, sold for
17 use as, or used in the generation of power for the propulsion of a
18 motor vehicle, airplane, or marine vessel, including a product
19 obtained by blending together any 1 or more products of petroleum,
20 with or without another product, and regardless of the original
21 character of the petroleum products blended, if the product
22 obtained by the blending is capable of use in the generation of
23 power for the propulsion of a motor vehicle, airplane, or marine
24 vessel. The blending of all of the above named products **in this**
25 **subdivision**, regardless of their name or characteristics, ~~shall is~~
26 conclusively ~~be~~ presumed to have been done to produce motor fuel,
27 unless the product obtained by the blending is entirely incapable
28 of use as motor fuel. Gasoline also includes transmixon. Gasoline
29 does not include diesel fuel or leaded racing fuel. An additive or

1 blendstock is presumed to be sold for blending unless a
2 certification is obtained for federal purposes that the substance
3 is for a use other than blending for gasoline.

4 (g) "Gross gallons" means the total measured product,
5 exclusive of any temperature or pressure adjustments,
6 considerations, or deductions, in gallons.

7 (h) "Implement of husbandry" means a farm tractor, a vehicle
8 designed to be drawn or pulled by a farm tractor or animal, a
9 vehicle that directly harvests farm products, or a vehicle that
10 directly applies fertilizer, spray, or seeds to a farm field.
11 Implement of husbandry does not include a motor vehicle licensed
12 for use on the public roads or highways of this state.

13 (i) "Import" means to bring motor fuel into this state by
14 motor vehicle, marine vessel, pipeline, or any other means. Import
15 does not include bringing motor fuel into this state in the fuel
16 supply tank of a motor vehicle if the motor fuel is used to power
17 that motor vehicle. Motor fuel delivered into this state from
18 outside of this state by or for the seller constitutes an import by
19 the seller, and motor fuel delivered into this state from outside
20 of this state by or for the purchaser constitutes an import by the
21 purchaser.

22 (j) "Importer" means a person who imports motor fuel into this
23 state.

24 (k) "Import verification number" means the number assigned by
25 the department to an individual delivery of motor fuel by a
26 transport truck, tank wagon, marine vessel, or rail car in response
27 to a request for a number from an importer or transporter carrying
28 motor fuel into this state for the account of an importer.

29 ~~(l) "Inflation rate" means the annual percentage change in the~~

1 ~~consumer price index, as determined by the department, comparing~~
2 ~~the 2 most recent October 1 through September 30 periods that are~~
3 ~~immediately preceding the effective date of the rate prescribed~~
4 ~~under section 8(1)(c), converted to decimals. If the annual~~
5 ~~percentage change is negative, then the inflation rate is zero.~~

6 (l) ~~(m)~~—"In this state" means the area within the borders of
7 this state, including all territories within the borders owned by,
8 held in trust by, or added to the United States of America.

9 (m) ~~(n)~~—"Invoiced gallons" means the number of gallons
10 actually billed on an invoice.

11 Sec. 8. (1) Except as otherwise provided in this act and
12 subject to the exemptions provided for in this act, tax is imposed
13 on motor fuel imported into or sold, delivered, or used in this
14 state at the following rates:

15 (a) ~~Except as otherwise provided in subdivision (c),~~ **For**
16 **gasoline**, as follows:

17 (i) Through December 31, 2016, 19 cents per gallon on gasoline.

18 (ii) Beginning January 1, 2017, 26.3 cents per gallon on
19 gasoline.

20 (b) ~~Except as otherwise provided in subdivision (c),~~ **For**
21 **diesel fuel**, as follows:

22 (i) Through December 31, 2016, 15 cents per gallon on diesel
23 fuel.

24 (ii) Beginning January 1, 2017, 26.3 cents per gallon on diesel
25 fuel.

26 ~~(c) Beginning with the rate effective on January 1, 2022 and~~
27 ~~January 1 of each year thereafter, the department shall determine a~~
28 ~~cents-per-gallon rate on motor fuel that shall be derived by~~
29 ~~multiplying the cents-per-gallon rate in effect during the~~

1 ~~immediately preceding calendar year by 1 plus the lesser of 0.05 or~~
2 ~~the inflation rate and rounding up the product to the nearest 1/10~~
3 ~~of a cent.~~

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

6 (3) The collection, payment, and remittance of the tax imposed
7 by this section ~~shall~~**must** be accomplished in the manner and at the
8 time 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~~**must**
12 be measured annually and ~~shall apply~~**applies** to the net gallons of
13 motor fuel lost or unaccounted for that are in excess of 1/2 of 1%
14 of all net gallons of fuel removed from the terminal across the
15 rack or in 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
28 act.

29 (6) Bills of lading and invoices ~~shall~~**must** identify the

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

9 (7) Notwithstanding any other provision of this act, a
10 facility in this state that produces motor fuel and distributes the
11 fuel from a rack for purposes of this act is a terminal, shall
12 obtain a terminal operator license, and shall comply with all
13 terminal operator reporting requirements under this act. A position
14 holder in a facility shall be licensed as a supplier and shall
15 comply with all supplier requirements under this act.

16 ~~(8) Beginning with the rate in effect on January 1, 2022 and~~
17 ~~January 1 of each year thereafter, the department shall publish~~
18 ~~notice of the tax rate under this section not later than 30 days~~
19 ~~before the effective date of the rate.~~

20 ~~(9) A determination by the department of the consumer price~~
21 ~~index, the inflation rate, or the tax rate under this section is~~
22 ~~presumed correct and shall not be set aside unless an~~
23 ~~administrative tribunal or a court of competent jurisdiction finds~~
24 ~~the department's determination to be clearly erroneous.~~