



**House
Legislative
Analysis
Section**

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SALES TAX EXEMPTION FOR DIESEL FUEL TAX

House Bill 4876 as introduced
First Analysis (10-23-89)

RECEIVED

Sponsor: Rep. Michael J. Griffin
Committee: Transportation

NOV 16 1989

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THE APPARENT PROBLEM:

Until April 1988, the federal excise tax on diesel fuel was paid by retailers (truck stop operators) into bank accounts, from which the IRS made collections. At that time, the federal government changed the point of collection of the tax to the refiner of the fuel. The Department of Treasury has interpreted this change to mean that the tax is levied on the manufacturer, and is therefore subject to the state sales tax (as are other federal excise taxes levied on manufacturers). Truck stop operators contend that this interpretation unfairly subjects them to an extra tax — a tax on a tax — that is ultimately passed on to the consumer. They have requested legislation to create an exemption from the sales tax for this amount.

THE CONTENT OF THE BILL:

The bill would amend the General Sales Tax Act to specify that the amount paid by a manufacturer for "retailer's federal excise taxes" on diesel fuel could be excluded from gross proceeds used to compute the tax.

MCL 205.54m

FISCAL IMPLICATIONS:

According to the Department of Treasury, the bill would result in a revenue loss of \$3 million per year. (10-23-89)

ARGUMENTS:

For:

For many years, Michigan's truck stop operators were at a competitive disadvantage compared to their counterparts in neighboring states because of Michigan's relatively high fuel taxes. Truckers would fill up before crossing the border into Michigan in order to save hundreds of dollars in taxes. Now that other states have raised their fuel taxes to similar levels, Michigan truck stops are enjoying a resurgence in business, benefiting both the state's economy and its fuel tax collections. However, the treasury department's move to take advantage of the federal change (without benefit of a change in statute or administrative rule or even a favorable attorney general opinion) has resulted in an added \$3 million tax on Michigan truck stops and their customers, trucking firms. This amounts to double taxation, as it is a tax levied on a tax. The arbitrary action on the part of the treasury department is especially unfair in light of recent large increases in fees imposed on truckers under last year's truck safety legislation.

Against:

According to a 1985 opinion of the attorney general, "it is a firmly established rule of tax law that a state sales tax may not be exacted on that part of the sale price which represents another federal tax which first attaches the moment a retail sale is made. Conversely, the sales tax is imposed upon the entire sales price including another federal tax which attaches prior to the retail sale." Since

the federal excise tax on diesel fuel is now levied on the manufacturer (the refiner), the sales tax should clearly apply to that portion of the price of diesel fuel that represents the federal excise tax. (In fact, the bill's reference to the "retailer's federal excise taxes on diesel fuel" is incorrect; there is no such tax.) As for the argument that it is unfair to levy a tax upon a tax, firm precedent exists for doing just that. State sales tax is levied on the price of other items which include a manufacturer's federal excise tax, such as tires, gasoline and so forth. State liquor taxes are another example, as they are levied on a base that includes federal taxes.

Against:

As the bill addresses complex tax policy questions, it should be referred to the Taxation committee for further consideration.

POSITIONS:

The Michigan Truck Stop Operators Association supports the bill. (10-18-89).

The Michigan Trucking Association supports the bill. (10-23-89)

The Michigan Petroleum Association supports the bill. (10-23-89)

AAA of Michigan does not oppose the bill. (10-18-89)

The Department of Treasury opposes the bill. (10-23-89)

H.B. 4876 (10-23-89)