

HOUSE BILL NO. 5585

March 05, 2020, Introduced by Rep. O'Malley and referred to the Committee on Appropriations.

A bill to amend 2000 PA 403, entitled
"Motor fuel tax act,"
by amending sections 2, 6, and 8 (MCL 207.1002, 207.1006, and
207.1008), sections 2 and 8 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) "Applicable percentage" means 1 of the following:



1 (i) Beginning October 1, 2020 through September 30, 2021, 2%.

2 (ii) Beginning October 1, 2021 through September 30, 2022, 4%.

3 (iii) Beginning October 1, 2022, 6%.

4 (c) "Average wholesale diesel fuel price" means the statewide
5 average wholesale diesel fuel price as determined by the department
6 based upon a 12-month rolling average of the wholesale diesel fuel
7 price. For the rate effective October 1, 2020 under section
8 8(1)(b), the 12-month rolling average period begins on July 1, 2019
9 and ends on June 30, 2020. For the rate effective October 1, 2021
10 and the rate in effect each fiscal year thereafter, the 12-month
11 rolling average period ends on the last day of the month that is 3
12 months before the date on which the rate determined under section
13 8(1)(b) becomes effective. As used in this subdivision, "fiscal
14 year" means an annual period that begins on October 1 and ends on
15 September 30.

16 (d) "Average wholesale gasoline price" means the statewide
17 average wholesale gasoline price as determined by the department
18 based upon a 12-month rolling average of the wholesale gasoline
19 price. For the rate effective October 1, 2020 under section
20 8(1)(a), the 12-month rolling average period begins on July 1, 2019
21 and ends on June 30, 2020. For the rate effective October 1, 2021
22 and the rate in effect each fiscal year thereafter, the 12-month
23 rolling average period ends on the last day of the month that is 3
24 months before the date on which the rate determined under section
25 8(1)(a) becomes effective. As used in this subdivision, "fiscal
26 year" means an annual period that begins on October 1 and ends on
27 September 30.

28 (e) ~~(b)~~—"Blendstock" means and includes any petroleum product
29 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 (f) ~~(e)~~—"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 (g) ~~(d)~~—"Blender" means and includes any person who produces
7 blended motor fuel outside of the bulk transfer/terminal system.

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

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

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



1 (ii) Pipeline movements of motor fuel from a refinery or
2 terminal to a terminal.

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

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

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

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

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

28 (o) ~~(l)~~—"Consumer ~~price index~~" **Price Index**" means **the** United
29 States ~~consumer price index~~ **Consumer Price Index** for all urban



1 consumers as defined and reported by the United States Department
2 of Labor, Bureau of Labor Statistics.

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

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

13 (r) ~~(o)~~—"Department" means the department of treasury or its
14 designee.

15 (s) ~~(p)~~—"Destination state" means a state, Canadian province
16 or territory, or foreign country to which motor fuel is directed
17 for export.

18 (t) ~~(q)~~—"Diesel fuel" means any liquid other than gasoline
19 that is capable of use as a fuel or a component of a fuel in a
20 motor vehicle that is propelled by a diesel-powered engine or in a
21 diesel-powered train. Diesel fuel includes number 1 and number 2
22 fuel oils, kerosene, dyed diesel fuel, and mineral spirits. Diesel
23 fuel also includes any blendstock or additive that is sold for
24 blending with diesel fuel, any liquid prepared, advertised, offered
25 for sale, sold for use as, or used in the generation of power for
26 the propulsion of a diesel-powered engine, airplane, or marine
27 vessel. An additive or blendstock is presumed to be sold for
28 blending unless a certification is obtained for federal purposes
29 that the substance is for a use other than blending for diesel



1 fuel. Diesel fuel does not include an excluded liquid.

2 (u) ~~(r)~~ "Dyed diesel fuel" means diesel fuel that is dyed in
3 accordance with ~~internal revenue service~~ **Internal Revenue Service**
4 rules or pursuant to any other ~~internal revenue service~~ **Internal**
5 **Revenue Service** requirements, including any invisible marker
6 requirements.

7 (v) ~~(s)~~ "Eligible purchaser" means a person who has been
8 authorized by the department under section 75 to make an election
9 under section 74.

10 (w) ~~(t)~~ "Excluded liquid" means that term as defined in 26 CFR
11 48.4081-1.

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

17 (y) ~~(v)~~ "Exporter" means a person who exports motor fuel.

18 Sec. 6. As used in this act:

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

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

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

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

29 (i) Is registered as a qualified terminal by the ~~internal~~



1 ~~revenue service.~~**Internal Revenue Service.**

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

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

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

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

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

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

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

21 (i) The transaction includes a transfer from the person who
22 holds the original inventory position for motor fuel in the
23 terminal as reflected in the records of the terminal operator.

24 (ii) The exchange transaction is completed before removal
25 across the rack from the terminal by the receiving licensed
26 supplier or licensed permissive supplier.

27 (iii) The terminal operator in its books and records treats the
28 receiving exchange party as the supplier that removes the product
29 across a terminal rack for purposes of reporting the transaction to



1 the department.

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

4 (k) "Wholesale diesel fuel price" means the price per gallon
5 of self-serve undyed no. 2 ultra-low sulfur diesel fuel charged by
6 a licensed supplier to a purchaser at the time of removal from a
7 terminal across the rack, as determined by the department, based on
8 available pricing data that best reflect or approximate Michigan
9 rack prices as reported by the United States Energy Information
10 Administration, the Oil Price Information Service, or a similar
11 nationally recognized source for such pricing data, whether
12 publicly available or available only by subscription. Wholesale
13 diesel fuel price does not include the tax imposed by this act,
14 prepaid sales tax under section 6a of the general sales tax act,
15 1933 PA 167, MCL 205.56a, federal excise tax under section 4081 of
16 the internal revenue code, 26 USC 4081, any other federal tax upon
17 motor fuel, or an environmental protection regulatory fee imposed
18 under section 21508 of the natural resources and environmental
19 protection act, 1994 PA 451, MCL 324.21508.

20 (l) "Wholesale gasoline price" means the price per gallon of
21 self-serve unleaded regular gasoline charged by a licensed supplier
22 to a purchaser at the time of removal from a terminal across the
23 rack, as determined by the department, based on available pricing
24 data that best reflect or approximate Michigan rack prices as
25 reported by the United States Energy Information Administration,
26 the Oil Price Information Service, or a similar nationally
27 recognized source for such pricing data, whether publicly available
28 or available only by subscription. Wholesale gasoline price does
29 not include the tax imposed by this act, prepaid sales tax under



1 section 6a of the general sales tax act, 1933 PA 167, MCL 205.56a,
2 federal excise tax under section 4081 of the internal revenue code,
3 26 USC 4081, any other federal tax upon motor fuel, or an
4 environmental protection regulatory fee imposed under section 21508
5 of the natural resources and environmental protection act, 1994 PA
6 451, MCL 324.21508.

7 (m) ~~(k)~~—"Wholesaler" means a person who acquires motor fuel
8 from a supplier or from another wholesaler for subsequent sale and
9 distribution at wholesale by a fuel transportation vehicle, rail
10 car, or other motor vehicle.

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), as
16 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 (iii) Beginning October 1, 2020, in addition to the tax
21 described in subparagraph (ii), an additional tax equal to the
22 applicable percentage multiplied by the average wholesale gasoline
23 price.

24 (b) Except as otherwise provided in subdivision (c), as
25 follows:

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

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



1 **(iii) Beginning October 1, 2020, in addition to the tax**
 2 **described in subparagraph (ii), an additional tax equal to the**
 3 **applicable percentage multiplied by the average wholesale diesel**
 4 **fuel price.**

5 (c) Beginning with the rate effective on January 1, 2022 and
 6 January 1 of each year thereafter, the department shall determine a
 7 cents-per-gallon rate on motor fuel that shall be derived by
 8 multiplying the cents-per-gallon rate **described in subdivisions**
 9 **(a) (ii) and (b) (ii)** in effect during the immediately preceding
 10 calendar year by 1 plus the lesser of 0.05 or the inflation rate
 11 and rounding up the product to the nearest 1/10 of a cent.

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

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

17 (4) Tax is also imposed at the rate described in subsection
 18 (1) on net gallons of motor fuel, including transmix, lost or
 19 unaccounted for, at each terminal in this state. The tax shall be
 20 measured annually and shall apply to the net gallons of motor fuel
 21 lost or unaccounted for that are in excess of 1/2 of 1% of all net
 22 gallons of fuel removed from the terminal across the rack or in
 23 bulk.

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

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

28 (b) To impose on suppliers a requirement to collect and remit
 29 the tax imposed by this act at the time of removal of motor fuel



1 unless otherwise specifically provided in this act.

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

5 (d) That the tax imposed by this act be collected and paid at
6 those times, in the manner, and by those persons specified in this
7 act.

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

17 (7) Notwithstanding any other provision of this act, a
18 facility in this state that produces motor fuel and distributes the
19 fuel from a rack for purposes of this act is a terminal, shall
20 obtain a terminal operator license, and shall comply with all
21 terminal operator reporting requirements under this act. A position
22 holder in a facility shall be licensed as a supplier and shall
23 comply with all supplier requirements under this act.

24 (8) Beginning with the rate in effect on January 1, 2022 and
25 January 1 of each year thereafter, the department shall publish
26 notice of the tax rate under ~~this section~~ **subsection (1) (a) (ii) and**
27 **(b) (ii)** not later than 30 days before the effective date of the
28 rate. **Beginning with the rate in effect on October 1, 2020 and**
29 **October 1 of each year thereafter, the department shall publish**



1 notice of the tax rate under subsection (1) (a) (iii) and (b) (iii) not
2 later than 30 days before the effective date of the rate.

3 (9) A determination by the department of the ~~consumer price~~
4 ~~index,~~ **Consumer Price Index**, the inflation rate, **average wholesale**
5 **diesel fuel price, wholesale diesel fuel price, average wholesale**
6 **gasoline price, wholesale gasoline price, taxable amount,** or the
7 tax rate under this section is presumed correct and shall not be
8 set aside unless an administrative tribunal or a court of competent
9 jurisdiction finds the department's determination to be clearly
10 erroneous.

11 Enacting section 1. This amendatory act does not take effect
12 unless all of the following bills of the 100th Legislature are
13 enacted into law:

14 (a) Senate Bill No. ____ or House Bill No. 5582 (request no.
15 01324'19).

16 (b) Senate Bill No. ____ or House Bill No. 5583 (request no.
17 01898'19).

18 (c) Senate Bill No. ____ or House Bill No. 5584 (request no.
19 01899'19).

20 (d) Senate Bill No. ____ or House Bill No. 5586 (request no.
21 06193'20).

