



Oil Franchise Tax

MAIN MESSAGE: WPMCA and its members urge legislators to reject any proposal involving a new oil franchise tax as it will hurt Wisconsin businesses and consumers. A straight-up gas tax increase would be more acceptable to our industry.

Issue: Touted as a way to get money from “Big Oil Companies” for the privilege of doing business in the state of Wisconsin, an Oil Franchise Tax will ultimately be a tax paid by Wisconsin businesses and passed on to Wisconsin consumers. While an anti-pass-through provision would make it illegal to pass on the cost of the assessment on to consumers, the provision will be legally challenged and likely overruled. Instead of passing a “hidden tax,” a straight up gas tax increase is a better alternative to fund state transportation projects.

Background: In order to help plug a \$5.8 billion state budget deficit, an “Oil Company Profits Tax” was submitted as part of Governor Doyle’s 2009-2011 state budget proposal. A tiered tax of up to 3% would be applied to the gross receipts of motor vehicle fuel sold.

Key Points:

- Close to 100 Wisconsin based fuel suppliers may be subject to paying the tax.
- An anti-pass through provision has never been adopted or upheld by any state in the country. This provision will likely be litigated and found “unconstitutional” and will be vulnerable to a legal challenge under the US Constitution’s Commerce Clause.
- If somehow Wisconsin can make the anti-pass-through work, the fuel supply into Wisconsin will be impacted. Fuel suppliers will choose to ship product to other markets and surrounding states where it is more economically beneficial for them. Why would they want to sell their product to Wisconsin when they will make less money on it?
- If a legal challenge is upheld, the state may have to pay back any funding received.
- The tax will be passed on causing the price of motor vehicle fuel to go up. Retailers on the border will be especially hard hit and lose customers to neighboring states.
- A new mechanism would need to be put in place to collect the tax, which will take time and generate a large learning curve for the public and private sector. The current gas tax mechanism is well understood, hard to cheat and efficient.
- Companies within Wisconsin will be treated differently depending on size. Fluctuations in the price of gas will occur depending on where a retailer purchases their gasoline. A small station may purchase fuel from a supplier that is paying the 3% tax rate. A larger station down the street may purchase fuel from a smaller supplier that is only paying a .5% rate, thus resulting in higher priced gas at the smaller station.