

March 25, 2009

The Honorable Russ Decker
Senate Majority Leader
P.O. Box 7882
Madison, WI 53707-7882

The Honorable Scott Fitzgerald
Senate Minority Leader
P.O. Box 7882
Madison, WI 53707-7882

The Honorable Mike Sheridan
Speaker of the Assembly
P.O. Box 8953
Madison, WI 53708

The Honorable Jeff Fitzgerald
Assembly Minority Leader
P.O. Box 8952
Madison, WI 53708

RE: Transportation Financing

Dear Senator Decker, Senator Fitzgerald, Representative Sheridan and Representative Fitzgerald:

As representatives of the state's highway users and fuel supply organizations, we share a common interest in ensuring adequate investment in the state's transportation infrastructure. Like the state's economy, our various business organizations rely on a good transportation system and we are willing to support increased funding to keep that system in good working order.

That said, it has become increasingly difficult and frustrating to garner support for transportation funding as user fees have been continuously diverted out of the segregated transportation fund over the last three budgets. While the undersigned organizations are willing to support reasonable increases in transportation funding, we must emphasize that such support is predicated on the understanding that there will be no further transfers or other diversions of segregated user fees out of the transportation fund. Our first priority rests with restoring the integrity of the transportation fund and we urge you to embrace that commitment in the coming budget.

We also have serious concerns regarding the Governor's proposal relating to establishing an Oil Company Assessment or gross receipts tax on motor fuel suppliers doing business in our state. From our perspective, the proposed Oil Company Assessment raises a number of negative and unintended consequences, which are outlined in further detail in attachment 1 to this letter. We oppose the proposed Oil Company Assessment and urge you to reject it in lieu of other, more reliable, mechanisms for funding transportation.

In that regard, we have outlined a suggested alternative proposal that raises transportation revenue roughly equivalent to the Oil Company Assessment. (See Attachment 2) The alternative approach we recommend is not perfect. It continues to rely on the fuel tax as the primary revenue source for the transportation fund; an issue that needs to be addressed in the long-term as the use of more fuel efficient and non-fuel vehicles

increases. It is also not an exhaustive list of potentially acceptable options for meeting transportation funding needs this biennium. It is simply our good faith effort to put forward a revenue proposal that we could support and one that is far more acceptable than the proposed Oil Company Assessment.

We look forward to working with you on these issues throughout the course of the budget process and are committed to being active partners in the development of a revenue package that represents wise investment in our transportation infrastructure.

Sincerely,

Aggregate Producers of WI
Midwest Equipment Dealers Association
Midwest Food Processors Association
National Federation of Independent Business – WI Chapter
Wisconsin Auto & Truck Dealers Association
Wisconsin Automotive Aftermarket Association
Wisconsin Automotive Parts Association
Wisconsin Grocers Association
Wisconsin Motor Carriers Association
Wisconsin Petroleum Council
Wisconsin Petroleum Marketers & Convenience Store Association
Wisconsin Retail Council

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Attachment 1

Oil Company Assessment

The budget bill (AB 75) recently introduced by Governor Doyle proposes that an oil company assessment be applied to the gross receipts of motor fuel suppliers doing business in Wisconsin, which includes a prohibition on passing the cost of the assessment onto consumers. The tiered assessment rate of up to 3% of annual gross receipts is estimated to generate \$272 million in additional revenue over the biennium. We oppose the Oil Company Assessment for a number of reasons as outlined below:

Tax Will be Litigated

- The anti-pass through provision invites litigation and places transportation revenues in jeopardy. A Legislative Council staff analysis in 2007 raised troubling questions regarding the constitutionality of the proposed tax. Numerous legal authorities have similarly concluded the tax would be vulnerable to challenge under the Commerce Clause.
- A similar anti-pass through provision in New York was found to be unconstitutional on these grounds. The type of anti-pass through provision advanced by DOT has not been adopted, or upheld, by any state in the country.

No Pass Through Provision Will Not Work

- The anti-pass through provision of the proposal is intended to prevent consumers from bearing the costs of the new tax. However, simple economic analysis makes this highly improbable. Simply stated, if the cost to sell gasoline in Wisconsin is higher than surrounding markets, supply will flow to lower cost markets. When supplies of commodities are constrained, prices increase. The government can't suspend the laws of economics. When taxes are placed on businesses, those costs are borne by consumers.

No Pass Through Provision Impacts Fuel Supply

- Even if the anti-pass through provision is somehow upheld in court, the mere implementation of such a tax has implications on fuel supply and consumer costs. As proposed, the tax would provide an incentive for fuel suppliers to ship product to other markets, which could result in real shortages at certain times of the year depending on market conditions. Further, it discourages investment in Wisconsin's fuel supply production and infrastructure, which leads to less efficient delivery over-time and results in higher fuel prices.

Oil Assessment Tax Not Equitable

- Taxes based on gross receipts such as the oil assessment fee have no connection to profitability. This proposed tax will take a percent of gross sales regardless of whether a company makes a penny in profits. Firms with the similar net income could face radically different effective tax rates on that income, depending on their profit margins. Some companies may, in fact, have profit margins lower than the tax rate.

Oil Assessment Tax Will Result in Fluctuating Revenue

- Unlike the existing gas tax, which is a fixed-amount excise tax on each gallon of gasoline, taxes on gross receipts will fluctuate wildly, depending on the price of fuel. For example, when Governor Doyle announced the tax in his budget speech in February of 2007, the wholesale price was approximately \$1.69 per gallon. By April 17 of that year the price had risen to \$2.18 per gallon and continued to rise throughout the summer. In 2008, the Department of Transportation estimated the Oil Company assessment would generate \$392 million over the 2009-11 biennium based on a top tier rate of 2.5% and an average retail price of gasoline at \$3.60 per gallon. The Governor's proposal in AB 75 raises the top tier rate to 3% but is estimated to collect \$120 million less than the 2.5% tax proposed by DOT due to a revised, lower, estimate of the price of fuel.
- Basing the tax on cents per gallon is a more predictable way of collecting revenue. The gallons consumed in Wisconsin will vary slightly because of the ups and downs of the economy, but they will not vary as much as the price of fuel.

Oil Assessment Tax Penalizes Diesel Fuel Users

- Because diesel currently sells for eighty to ninety cents per gallon higher than gasoline, diesel fuel users will pay more in taxes under the gross receipts proposal. At the 3% rate, the tax on diesel (assuming that it is passed on) would be two-to-three cents per gallon higher for diesel than gasoline.

Wisconsin Truckers Will Pay More than Out of State Truckers

- The trucking industry pays fuel taxes based on the number of miles that it operates in each state under the International Fuel Tax Agreement (IFTA). Those states that currently charge an oil assessment tax translate that tax to a "cents per gallon" rate that is incorporated into the IFTA tax table. Under the Governor's proposal, because of the no-pass through provision, Wisconsin will not be able to calculate the impact of the tax on diesel fuel. As a result, if the no pass-through provision is found to be unconstitutional, Wisconsin truckers will pay for the tax at the pump, but out of state truckers utilizing Wisconsin highways would not be required to pay the tax unless they filled up in Wisconsin.

Attachment 2

Transportation Funding Proposal

2009-11 Revenue Proposal (in millions)

Source	FY 10	FY11	Biennium
3-cents/gallon	73	97	170
Veh Title Fee	26	35	61
PECFA	21	21	42
Electric fee			15
IM savings	8	8	16
TOTAL			304

Fund Sources and Fiscal Assumptions

1. Gas Tax: Increase the gas tax by 3 cents per gallon. Estimate based on \$32.3 million per penny for 12 months. (1st year = 9 months collection)
2. Vehicle Title Fee: Increase the standard vehicle title fee by \$25 (from \$53 to \$78) Estimate based on increased revenue of \$35 million annually with 9 months collection in the first year.
3. PECFA: Use available revenue for transportation after payment of debt service and claims based on FY 08 audit figures. **Note:** Statutory language should be adopted to deposit all PECFA revenue into the Transportation Fund with directive that first draw on the money is reserved for PECFA debt service and second draw for payment of eligible PECFA claims, with the balance remaining in the segregated transportation fund and available for transportation fund expenditures.
4. Electric and plug-in hybrid fee based on \$50 annual surcharge on plug-in hybrids to be collected along with annual registration fee.
5. Inspection Maintenance Program (IM) savings based on estimated savings associated with new contract. Assumes implementation of new contract begins in the first year of the biennium.