

**Department of Transportation
2009-11 Biennial Budget Request
ISSUE PAPER**

PROGRAM Department-wide
ISSUE TITLE Establish State Oil Company Assessment

REQUEST:

Provide \$165,750,900 SEG in FY 10 and \$226,784,100 in FY 11 in new revenues from the creation of an oil company assessment that would apply to motor vehicle fuel sales on October 1, 2009, or the effective date of the bill if after October 1, 2009, and deposit the revenues from the assessment to the transportation fund.

SUMMARY:

State-funded transportation programs rely primarily on revenues from the state motor fuel tax and vehicle registration fees. Since FY 04, taxable motor fuel consumption has been either flat or declining and has not returned to the peak level of 3.27 billion gallons. Since Hurricane Katrina in 2005, motor fuel prices have increased dramatically nation-wide. Worldwide demand for oil, disruptions in supply, and the recent economic crisis have all contributed to slowing consumption of motor fuel. As shown in the table below, motor fuel consumption in Wisconsin has declined in three of the last four years.

Fiscal Year	Taxable Motor Fuel (in gallons)	Percent Change
2004	3.273 billion	
2005	3.269 billion	-0.10%
2006	3.195 billion	-2.30%
2007	3.259 billion	2.00%
2008	3.247 billion	-0.40%

Future federal funding levels are unpredictable and also rely primarily on federal motor fuel excise tax collections. Through August 2008, total national vehicle miles traveled, a proxy for taxable motor fuel consumption, has declined for 10 months in a row, year over year. The Department is assuming no increases in federal funding next biennium. At the same time, Wisconsin is facing significant, complex, and increasingly costly challenges across all transportation modes.

With little or no growth in traditional transportation funding sources, the Department requests creation of a state Oil Company Assessment to be applied to the gross receipts of motor fuel suppliers doing business in Wisconsin. For the privilege of doing business in Wisconsin, the assessment will be collected quarterly and would apply to the receipts that are the first sale of motor vehicle fuel received by the supplier for sale in this state, for sale for export to this state, or for export to this state.

Assessment Rates and Exemptions

The following table provides a tiered rate structure to be applied to gross receipts of motor fuel suppliers. The assessment rate increases based on annual gross receipts so that the largest suppliers pay the highest rate of 2.5%.

Total Gross Receipts	Assessment Rate
\$0 to \$15,000,000	Exempt
\$15,000,001 to \$75,000,000	0.5%
\$75,000,001 to \$120,000,000	1.5%
Over \$120,000,000	2.5%

Exemptions to the assessment include

The first \$15,000,000 of gross receipts per year.

Income derived from the first sale of bio-diesel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol (E85) would not be included in the suppliers gross receipts. The ethanol portion of gasohol, which generally contains up to 10% ethanol, would not be excluded from the assessment.

All fuel use currently exempt from the state motor fuel excise tax.

The gross receipts of a supplier exclude both federal and state motor fuel excise tax.

The tiered assessment structure and exemptions to gross receipt data provided by the Department of Revenue (DOR) indicate that an oil company assessment would generate \$165,750,900 in FY 10 and \$226,784,100 in FY 11.

No Pass Through Requirements

This proposal prohibits any supplier subject to the oil company assessment from taking any action to increase or influence the selling price of motor vehicle fuel to recover the amount of the assessment. Any person who takes such action would be subject to a penalty equal to the amount of the gain the supplier received by increasing the selling price.

Other States

Currently, there are five states that apply charges or fees that are similar to the proposed oil company assessment. The following table summarizes the main features of each states fee:

New Jersey	Petroleum Products Gross Receipts Tax is imposed on most first sales and uses of petroleum products at a rate of 2.75% of the purchase price of the petroleum products.
New York	Petroleum Business Tax and a supplementary Petroleum Business Tax are levied on gasoline, gasohol, and diesel.
Pennsylvania	The Oil Franchise Fee consists of four parts and is imposed at varying mill rates per dollar of average wholesale price.
Connecticut	The Petroleum Products Gross Receipts Tax is calculated based on the product price.
Ohio	State Business or Franchise Tax/Fee levied on gasoline

Enforcement Provisions

If the oil company assessment is included in the Governor's biennial budget recommendation, several enforcement and compliance provisions will have to be developed. In general, compliance and enforcement activities would fall outside of the responsibilities of the Department. Rather, if the Governor chooses to include the oil company assessment in his request, the Executive Budget would establish authority and funding for another state agency, primarily DOR, to ensure compliance with and to enforce the provisions of the oil company assessment. Specific authority needed to enforce the oil company assessment, include:

Provide DOR with the authority to administer the oil company assessment and to take any action conduct any proceeding, and impose interest and penalties.

Provide DOR with the authority to promulgate rules to implement the oil company assessment.

Allow DOR to audit any supplier who would be subject to the oil company assessment to determine whether the supplier has taken any action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment.

- Require DOR to annually submit a report to the Governor and the Legislature that contains information on any audits conducted in relation to this authority in the previous year. Provide that the Attorney General may represent the State, or assist a district attorney, in prosecuting any case arising from the administration and enforcement of the oil company assessment.

JUSTIFICATION:

Over 90% of state revenues deposited into the Transportation Fund are derived from the motor fuel excise tax and vehicle registration-related fees. The Department has always relied on a narrow funding base to pay for and support a broad range of transportation programs. Slow growth in gasoline consumption and the elimination of motor fuel tax indexing have combined to limit natural growth in transportation revenues. At the same time, Wisconsin faces significant transportation challenges next biennium, including:

\$63 million in state funds to continue work on Interstate 94 from Milwaukee to the Illinois state line to meet the scheduled completion date of 2016 (a total of \$571 million is proposed for the project this biennium);

\$181 million to begin work on the Zoo Interchange in Milwaukee County so that construction can begin by 2012 and meet a completion date of 2016;

- \$17.0 million to continue implementation of REAL ID;
- \$100 million in General Obligation bonding, with annual debt service payments funded from the Transportation Fund, for transit in SE Wisconsin; Expanding Hiawatha passenger train service; and Inflationary cost increases for all highway-related programs and local aid programs.

In addition to these initiatives, rising fuel and utility costs have made it more expensive to maintain current levels of customer service department-wide. For example, higher fuel costs have contributed to a need for additional funding for highway maintenance and for the Division of State Patrol. As demands for transportation funding have increased, revenue growth has not kept pace. As a result, the Department is proposing the creation of an oil company assessment.

The proposal contains an anti-pass through provision, which prohibits fuel suppliers from passing the cost of the oil company assessment to consumers. Those found to be passing the cost of the assessment to consumers face monetary penalties.

The oil company assessment would allow the state to recoup some of the oil industry profits generated in Wisconsin. By depositing revenues from the oil company assessment in the Transportation Fund, the state is requiring oil companies to pay a share of the cost of building and maintaining the state roads on which a portion of those profits were generated.

Exempting the first \$15,000,000 of gross receipts, recognizes that smaller fuel suppliers would be affected more by the assessment than would larger more fully integrated suppliers. To reduce or eliminate the disproportionate impact on smaller suppliers with smaller profit margins, the proposal would provide an across the board exemption for the first \$15,000,000 of gross receipts.

Finally, the proposal does not include gross receipts from the sale of E85, bio-diesel fuel, and certain alternative fuels such as compressed natural gas and liquefied petroleum gas. The proposal to exclude certain types of non-traditional fuels is an attempt to encourage the sale and use of non-traditional motor fuels in Wisconsin. Encouraging the use of non-traditional motor fuel types should have the benefit of improving air quality, reducing reliance on foreign oil suppliers, and providing new or expanded markets for certain agricultural products in Wisconsin.