

**Department of Transportation
2009-11 Biennial Budget Request
STATUTORY MODIFICATIONS**

TOPIC Establish State Oil Company Assessment

DESCRIPTION OF CHANGE:

Create an oil company assessment that would initially apply to motor vehicle fuel sales on October 1, 2009 or the effective date of the bill if later than October 1, 2009. Deposit revenues from the assessment to the transportation fund. The oil company assessment would impose, for the privilege of doing business in this state, an assessment on each motor vehicle fuel supplier, on a tiered basis a rate of up to 2.5% of the supplier's gross receipts in each calendar quarter. Specify that the assessment would apply to the gross receipts that are derived from the first sale of motor vehicle fuel by the supplier for sale in this state, for sale for export to this state, or for export to this state.

The oil company assessment should incorporate the following provisions:

The assessment will be applied on a tiered basis (see table below) and be reported and paid on a quarterly basis;

The rate of assessment is applied to the supplier's gross receipts from the first sale of motor vehicle fuel;

Require persons, including terminal operators not licensed in this state as motor fuel suppliers, to report and pay the oil company assessment on any motor vehicle fuel in storage in this state for which the assessment has not already been paid (exclude motor fuel already in a motor vehicle fuel tanks);

The assessment will be applied to first sales on October 1, 2009 or the effective date of the bill, if after October 1, 2009;

The rate of assessment is applied based on the motor vehicle fuel suppliers' gross receipts excluding both federal and state motor fuel excise taxes and the state petroleum inspection fee;

The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover any portion of the oil company assessment (anti-pass through provision);

Any person that violates the anti-pass through provision will be subject to a penalty equal to the monetary gain;

Provide that if the anti-pass through provision is found illegal or unconstitutional, that the severability of the remaining portions of the assessment will not be impacted;

Provide that if there is a legal challenge to the assessment, in whole or in part, the assessment can continue to be collected during the period of the legal challenge;

Income derived from the first sale in this state of bio-diesel fuel, or ethanol blended with gasoline of at least 85% ethanol, or alternative fuels (for example liquefied petroleum gas and compressed natural gas in s. 78.39, Wis. Stats.) is not included in the suppliers' gross receipt for purposes of calculating the assessment;

Provide the same exemptions to the oil company assessments that are provided for the exempt or refundable use as applied to the state's motor fuel excise tax, for purposes of calculating gross receipts (ss. 78.01(2) and (2m), Wis. Stats., ss. 78.12(4)(a) 2 and 3, Wis. Stats.);

For transfers between related parties, the point of first sale is the date of such transfer, and the gross receipts are calculated on a monthly basis using an index determined by rule, and

Revenue collected from the assessment is deposited into the transportation fund (s. 25.40(1), Wis. Stats.).

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

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.
- Allow DOR to request the Attorney General to represent or assist in the prosecution of 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:

- \$60.9 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 GO 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.