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## HOME HEATING FUEL

### Senate Bill 178 (Substitute H-1) First Analysis (4-28-99)

**Sponsor: Sen. George A. McManus, Jr.**  
**House Committee: Tax Policy**  
**Senate Committee: Transportation and Tourism**

#### ***THE APPARENT PROBLEM:***

Public Act 225 of 1992 amended the motor fuel tax act to change the collection point for the tax and to require certain forms of record-keeping and reporting. The aim of the legislation, according to analyses written at the time, was to reduce the number of collection points and improve the tracking of petroleum products so as to close loopholes that had resulted in many taxable transactions going untaxed. The act was modeled on recent changes in federal motor fuel tax laws. Generally speaking, Public Act 225 required suppliers (refiners or firms importing fuel to the state) to collect the tax from fuel wholesalers. The act also permits wholesale distributors to purchase fuel from suppliers without paying the tax if the product is intended for sale for tax-exempt purposes. For example, the motor fuel tax is not levied on fuel used in motor vehicles operated by federal, state, or local government; on fuel used for off-highway use (agriculture, for example); on fuel used in public transportation, including school buses; or on diesel fuel when used as home heating oil.

However, the act requires wholesalers at the end of every quarter to pay motor fuel taxes on fuel purchased tax free but not sold for a tax-free purpose. They must file a report indicating the number of gallons received for tax-exempt purposes and the amount sold for tax-exempt purposes, and then pay the tax on the difference. One consequence of this provision is that fuel purchased to be sold for a tax-free purpose but still in storage becomes subject to the tax (because it has not yet been sold for a tax-free purpose). Once the stored product is sold for a tax-free purpose, the state refunds the tax payments. This is particularly a problem for heating oil dealers. Heating oil is exempt from the tax but is similar to diesel fuel. Wholesalers who purchase diesel fuel for use as heating oil must pay a motor fuel tax on the product while it is in storage and then wait months for

a refund. Industry representatives complain that this loss of cash flow is burdensome, unfair, and unnecessary, especially for smaller companies. Legislation has been introduced to remedy the problem.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the motor fuel tax act (Public Act 150 of 1927) to specify that the tax was not due and payable on those gallons of K-1 kerosene or dyed distillates (e.g., home heating fuel) that a wholesale distributor purchased tax exempt that had not been sold and that were being held in bulk storage at the end of a reporting period. This provision would be in effect until January 1, 2002, or until legislation was enacted to establish a dyed distillate program in the state, whichever is earlier.

The bill would also specify that, when necessary to ensure against fraud, and on the basis of the findings of an audit, the commissioner of revenue could require a wholesale distributor to file quarterly returns and pay the tax.

MCL 207.112

#### ***HOUSE COMMITTEE ACTION:***

The House Tax Policy Committee added one amendment to the Senate-passed version of the bill. The Senate-passed version said that the commissioner of revenue could require monthly filings of returns and payment of taxes when necessary to ensure fraud. The committee amendment would say the commissioner could require a wholesale distributor to file "quarterly" returns and pay the tax "based on the findings of an audit."

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## **BACKGROUND INFORMATION:**

A similar bill, House Bill 4356, passed the House during the 1997-98 legislative session. Another bill on the issue, Senate Bill 1082, passed the Senate during the 1993-94 legislative session.

## **FISCAL IMPLICATIONS:**

The Senate Fiscal Agency notes that the bill would have no impact on the tax liability of diesel fuel distributors. It would reduce interest earnings to the state, which now collects taxes on home heating fuel in storage and then issues refunds when the fuel is sold for home heating purposes. (SFA analysis dated 3-9-99)

## **ARGUMENTS:**

### **For:**

The bill would end the current practice of making home heating oil dealers pay taxes to the state on fuel in storage and wait for a refund until the fuel is sold for home heating purposes. Industry spokesmen describe this as a loan to the state by petroleum wholesalers. They say that it makes sense for wholesalers to purchase heating oil (which is the same as diesel motor fuel) when demand is low -- and prices cheaper -- and store the product until it is needed. The savings can be passed on to heating oil customers. The industry argues that none of its competitors in the energy business must pay motor fuel road taxes on their capacity to produce energy or on their inventories, and it makes no sense to subject home heating oil to a road tax (even if the taxes paid are eventually refunded). The bill would reduce the paperwork burden on home heating oil dealers and help their cash flow.

### **Against:**

A representative of the Department of Treasury told the House Tax Policy Committee that it would prefer to continue efforts to work out an alternative solution to the problem with working groups from the industry. These groups could design a dyed fuel program that would allow the state to better track fuel for tax purposes. (Many states are said to have such a program, which can track dyed non-taxable fuel to see

that it is not being used for a taxable purpose; for example, heating oil being used as motor diesel fuel.) For the state, the issue is not cash flow but tax

compliance. The 1992 legislation, which this bill would amend, was designed to prevent fraud or tax avoidance in the industry and to improve tax compliance.

### **Response:**

Should dyed fuel legislation be developed, it could be enacted and implemented. Until then, this bill addresses an immediate problem facing heating oil dealers.

## **POSITIONS:**

The Michigan Petroleum Association and the Michigan Association of Convenience Stores supports the bill. (4-27-99)

The Department of Treasury would prefer the adoption of a dyed fuel program. (4-27-99)

Analyst: C. Couch

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.