Ohio Legislative Service Commission

Bill Analysis

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S.B. 267

131st General Assembly

(As Introduced)

Sens. Seitz and Peterson

BILL SUMMARY

- Subjects compressed natural gas (CNG) to the motor fuel tax, measured by gallon equivalents, if it is to be used to power vehicles on public roads.
- Subjects CNG to the motor fuel tax after three years, then phases in the full 28¢ motor fuel tax rate for CNG over seven years.
- Exempts gross receipts from the sale of CNG from the commercial activity tax, but subjects the first sale of compressed natural gas to the petroleum activity tax.
- Exempts from the motor fuel tax liquid natural gas (LNG) and propane for three years, then gradually reapplies the full rate over seven years according to the same phase-in schedule as used for CNG.
- Authorizes a nonrefundable income tax or commercial activity tax credit for the purchase of a new alternative fuel vehicle or the conversion of a traditional fuel vehicle to an alternative fuel vehicle.
- Provides that the credit equals 50% of the adjusted purchase price of the vehicle or of the cost of the conversion parts and equipment, subject to a per-vehicle cap of between $5,000 and $25,000 depending on gross vehicle rating.
- Limits the credit to alternative fuel vehicles purchased or converted within five years after the bill's effective date.
- Establishes the Gaseous Fuel Vehicle Conversion Program, to be administered by the Director of Environmental Protection.

- Permits the Director to make grants to eligible public entities and nonprofit corporations for the purpose of promoting the use of vehicle fleets that operate on cleaner fuels.

- Makes an appropriation.

CONTENT AND OPERATION

Taxation of CNG under the motor fuel tax

The bill subjects compressed natural gas (CNG) to Ohio's existing motor fuel tax beginning three years after the bill's effective date. Under continuing law, Ohio levies an excise tax on all motor vehicle fuel used, distributed, or sold within Ohio and used to generate power for the operation of motor vehicles on Ohio public roads. This tax is levied at a rate of 28¢ per gallon and generally is payable by motor vehicle fuel wholesalers and distributors. Under current law, taxable motor fuel includes liquid motor fuels such as gasoline, diesel, kerosene, liquid petroleum gas (e.g., propane), and liquid natural gas (LNG).[1]

The bill expands the definition of motor fuel to include CNG, subjecting CNG to the motor fuel tax if it is to be used to fuel vehicles on public roads in Ohio.[2] However, unlike liquid motor fuel, which, except for LNG, is taxed according to gallons received, the tax on compressed motor fuel is measured according to gallon equivalents. For CNG that is received through a dispenser capable of measuring gallons, the gallon equivalent standard is 6.38 pounds of CNG. For all other CNG, the gallon equivalent standard is either 139.3 cubic feet of CNG or the amount of CNG that has a lower heating value of 129,500 BTUs.[3]

Temporary rate reduction

The bill phases in the 28¢-per-gallon motor fuel tax rate for CNG over seven years. For the first twelve-month period that begins three years after the bill's effective date, the rate equals 5¢ per gallon. For the next year, the rate rises to 6¢ per gallon. For the next three years, the rate increases to 7¢ per gallon. For the next two years, the rate equals 14¢ per gallon. Finally, after those seven years, the rate increases to the full

[1] R.C. Chapter 5735.

[2] R.C. 5735.01.

[3] R.C. 5735.012 and 5735.015. These per-pound and per-cubic feet figures have the same energy potential as one gallon of diesel fuel, according to the U.S. Department of Energy. Lower heating value is a measure of energy content. www.afdc.energy.gov.

28¢-per-gallon rate. Revenue collected both during and after the phase-in period is credited and distributed in the same proportion and manner as motor fuel tax collected under existing law.[4]

Taxation of CNG receipts

By defining CNG as a form of motor fuel, the bill excludes by implication receipts from the sale of CNG from the commercial activity tax (CAT) and instead subjects those receipts to a different tax specifically applicable to motor fuel sales. Under continuing law, the CAT is a tax levied at a rate of 0.26% of taxable gross receipts from sales or exchanges in Ohio.[5] Motor fuel receipts are excluded from the tax base of the CAT.[6] Continuing law levies a separate tax on the sale or exchange of motor fuel – referred to as the "petroleum activity tax" (PAT).

The PAT is levied on suppliers of motor fuel on the basis of each supplier's "calculated gross receipts" –the volume of the supplier's first sale of motor fuel in the state multiplied by the average price for unleaded gasoline, diesel, or propane fuel, as applicable. The PAT applies to only one transaction in the motor fuel distribution chain – the first transaction in which motor fuel is sold for delivery to a location in the state. The rate of the PAT is 0.65% of the suppliers' calculated gross receipts.[7]

The PAT uses the same definition of motor fuel as applies to the motor fuel excise tax law.[8] The bill, by expanding the definition of motor fuel for purposes of the motor fuel tax, subjects the first sale or exchange of that fuel to the PAT.[9] The bill taxes CNG based on the average wholesale price of a gallon of diesel fuel multiplied by the volume of CNG sold or exchanged. The bill does not specify how a gallon of CNG will be measured for purposes of calculating the PAT; presumably the same gallon equivalents would apply as under the motor fuel excise tax.

Motor fuel tax reduction for LNG and propane

The bill exempts LNG and propane from the motor fuel tax for the three years following the bill's effective date. Thereafter, the bill subjects LNG and propane to the

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[4] R.C. 5735.016.

[5] R.C. Chapter 5751.

[6] R.C. 5751.01(F)(2)(r), not in the bill.

[7] R.C. Chapter 5736.

[8] R.C. 5736.01, not in the bill.

[9] R.C. 5735.01.

motor fuel tax again, but the rate gradually increases back to 28¢ per gallon over seven years. The rate schedule during those seven years mirrors the schedule applicable to CNG during those same years (see "**Temporary rate reduction**," above).[10]

Under current law, LNG and propane are subject to the full 28¢-per-gallon motor fuel tax.

Alternative fuel vehicle tax credit

The bill authorizes a nonrefundable credit against the income tax or CAT for the purchase or conversion of an alternative fuel vehicle. An alternative fuel vehicle includes any vehicle, including a bi-fueled or dual-fueled vehicle, that is registered for use on public highways and that runs on CNG, LNG, or liquid petroleum gas.

To qualify for the credit, a taxpayer must purchase a new alternative fuel vehicle, or convert a traditional fuel vehicle (i.e., a vehicle that runs on gasoline or diesel) to an alternative fuel vehicle, within five years after the bill's effective date. The purchase of a new alternative fuel vehicle must meet the following conditions:

(1) The taxpayer must purchase the vehicle from an original equipment manufacturer, automobile retailer, or after-market conversion facility;

(2) The taxpayer must be the first person to purchase the vehicle for personal use or for use in business and not for resale;

(3) The alternative fuel technology used in the vehicle must have received a compliance designation or been certified by the U.S. Environmental Protection Agency for new or intermediate use;

(4) If the vehicle runs on CNG, at least five years must remain until the date established by the manufacturer of the fuel tank as the end-of-life date for the tank.

Credit amount

The amount of the credit equals 50% of the adjusted purchase price of the new alternative fuel vehicle or 50% of the cost of equipment and parts needed to convert a traditional fuel vehicle, subject to a per-vehicle cap based on the vehicle's gross vehicle rating. The "adjusted purchase price" of a new vehicle is the portion of the price of the vehicle that is attributable to the parts and equipment used for the storage of alternative fuel, the delivery of alternative fuel to the motor, or the exhaust of gases from the combustion of alternative fuel. For a converted vehicle, the cost of conversion parts and

[10] R.C. 5735.016.

equipment may not include the cost of any parts and equipment that have previously been used to modify or retrofit another traditional fuel vehicle. For either a purchase or a conversion, the credit is limited to the one of the following amounts:

(1) If the vehicle has a gross vehicle rating of 8,500 pounds or less, $5,000;

(2) If the vehicle has a gross vehicle rating of between 8,500 and 10,000 pounds, $10,000;

(3) If the vehicle has a gross vehicle rating of more than 10,000 pounds, $25,000.

Credit carry-forward and pass-through treatment

A taxpayer may claim the credit for the taxable year or tax period in which the taxpayer purchases the new vehicle or the conversion parts and equipment. The credit allowed for a vehicle may be claimed against either the income tax or CAT, but not both. If the credit exceeds the taxpayer's tax liability for that year or tax period, the taxpayer may carry the credit forward to future years or tax periods until it is fully used.

The bill allows the equity owners of a pass-through entity that purchases or converts a vehicle to claim their proportionate or distributive share of the credit against the income tax.[11]

Gaseous Fuel Vehicle Conversion Program

The bill creates a grant program administered by the Director of Environmental Protection called the Gaseous Fuel Vehicle Conversion Program. The purpose of the program is to promote the conversion of public fleets to operate on cleaner fuels. Under the program, the Director may make grants to eligible public entities and nonprofit corporations for the conversion of a vehicle to operate on gaseous fuel, i.e., CNG, LNG, or liquid petroleum gas, or for the incremental cost associated with the purchase of a vehicle originally equipped by the manufacturer to operate on gaseous fuel. "Incremental cost" means the excess cost associated with the purchase of a vehicle originally equipped by the manufacturer to operate on gaseous fuel as compared to the purchase of an equivalent vehicle that operates on gasoline or diesel fuel.[12]

[11] R.C. 5747.89, 5747.98, 5751.55, and 5751.98.

[12] R.C. 122.079(A) and (B).

The Director may make grants to state agencies, political subdivisions, school districts, transit systems, or nonprofit corporations.[13] The bill requires the Director to adopt rules that are necessary for the administration of the program.[14]

Appropriation

The bill appropriates $16 million per year in fiscal years 2016 and 2017 from the General Revenue Fund to fund the gaseous fuel conversion grant program. The bill also states that it is the General Assembly's intent to continue appropriating $16 million per fiscal year through the end of fiscal year 2021 to fund that program.[15]

HISTORY

ACTION	DATE
Introduced	01-28-16

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[13] R.C. 122.079(A) and (B).

[14] R.C. 122.079(C).

[15] Sections 4 to 6.