



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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S.B. 113

132nd General Assembly
(As Introduced)

Sens. Coley, Terhar

BILL SUMMARY

- Shifts the burden among two main sources of revenue for state and local transportation projects – vehicle registration fees and the state motor fuel tax.
- Authorizes an additional motor vehicle registration fee of \$149 for passenger cars and noncommercial vehicles and \$684 for commercial cars and trucks.
- Specifies that all revenue from the additional fee must be used in the same manner as revenue from the state motor fuel tax, i.e., for state and local transportation-related projects.
- Requires the Registrar of Motor Vehicles to issue, with each vehicle registration, a fuel tax reduction card that the vehicle owner may use to lower the retail price of motor fuel by 28¢ per gallon – which equals the fuel excise tax paid by motor fuel dealers.
- Allows motor fuel dealers to claim a credit against the 28¢ per gallon state motor fuel tax for each gallon of the dealer's fuel that a consumer purchases using a fuel tax reduction card.
- Requires the Registrar and the Tax Commissioner to administer various aspects of the fuel tax reduction card program.
- Provides for penalties for any person who improperly uses, creates, reproduces, or tampers with a fuel tax reduction card.

* Makes a clerical correction and changes to the **COMMENT** section.

CONTENT AND OPERATION

Modifications to state transportation funding scheme

The bill shifts the burden among two main sources of state transportation funding – vehicle registration fees and the state motor fuel tax. The bill increases vehicle registration fees, while also providing vehicle owners with a card that can be used to lower the retail price of motor fuel by 28¢ per gallon (i.e., the amount of the state's current motor fuel tax). For each gallon of fuel purchased using such a card, the motor fuel dealer that distributed that fuel receives a credit against the state's motor fuel tax.

Increase in registration fees

Under the bill, beginning in 2020, when an owner registers a vehicle or renews a registration in the state, the owner will be charged an increased vehicle registration fee and receive a card that the owner may apply to retail purchases of motor fuel, such as gasoline (hereinafter referred to as a "fuel tax reduction card").

The additional registration fee equals \$149 for passenger cars and noncommercial vehicles and \$684 for commercial cars and trucks. This fee will be added to the existing registration fee for the corresponding vehicle. Currently, the base passenger car annual vehicle registration fee is \$34.50, not including any local permissive taxes. The base commercial truck annual registration fee ranges between \$75 and \$1,370, depending on the truck's weight.¹

Fuel tax reduction card

At the same time that a vehicle owner registers a vehicle, the Registrar of Motor Vehicles will issue the owner a fuel tax reduction card. Cards are issued per vehicle, not per owner. The card will include the owner's name and address, a description of the vehicle, whether the vehicle is a commercial car or truck, and a unique fuel tax reduction card number.²

Use at retail locations

Vehicle owners may use their fuel tax reduction cards at retail locations to reduce the price of motor fuel by 28¢ per gallon, which equals the state's current motor fuel tax. Retailers, such as gas stations, must install the equipment necessary to accept the cards.³

¹ R.C. 4503.10 and <http://www.bmv.ohio.gov/links/bmv-all-fees.pdf#page=2>.

² R.C. 4503.106(A).

³ R.C. 5735.50(B).



A card issued for a particular vehicle may only be used to purchase fuel for that vehicle. However, an owner may authorize another individual to use the owner's card to purchase fuel for the vehicle corresponding with that card.⁴

Availability of cards to nonresidents

Nonresidents also may purchase a fuel tax reduction card for a vehicle. The cost of the card is the same as the additional registration fee that would apply to the vehicle if it were registered in Ohio (i.e., either \$149 or \$684).⁵

Motor fuel tax credit

Background

Under continuing law, Ohio levies an excise tax on all motor vehicle fuel used, distributed, or sold within the state and used to operate motor vehicles on public roads. As noted above, the tax is levied at a rate of 28¢ per gallon. Under current law, taxable motor fuel includes liquid motor fuels such as gasoline, diesel, kerosene, liquid petroleum gas, and liquid natural gas.

Generally, the motor fuel tax is paid by motor vehicle fuel wholesalers and distributors. The tax is not paid directly by consumers, though it may be incorporated into the cost of the fuel the consumer purchases.

Credit for fuel purchased at reduced price

The bill provides that, each time a fuel tax reduction card is applied to a gallon of fuel, the motor fuel dealer that distributed that fuel receives a credit for the motor fuel tax on that gallon. Dealers pay the tax monthly, so the credit is based on the total number of gallons of the dealer's fuel that consumers purchased using a fuel tax reduction card in the preceding month.⁶

To account for the number of gallons purchased at a reduced price each month, the bill requires retailers to submit monthly reports to motor fuel dealers and the Tax Commissioner. The report to each dealer must state the total number of gallons of the dealer's fuel that the retailer sold that month and the number of such gallons that were purchased using a fuel tax reduction card. The report to the Tax Commissioner must include the following information for the preceding month:

⁴ R.C. 5735.50(C), (D), and (F).

⁵ R.C. 4503.106(B).

⁶ R.C. 5735.06.



(1) The total number of gallons the retailer sold that month and the portion of such gallons obtained from each motor fuel dealer;

(2) The total number of such gallons sold at a reduced price with a fuel tax reduction card and the portion of such gallons obtained from each motor fuel dealer;

(3) The name and address of each dealer from whom the retailer obtained motor fuel that the dealer sold at retail;

(4) The fuel tax reduction card number of each card used to reduce the price of fuel purchased from the retailer, and the number of gallons purchased with respect to each card.⁷

Use of revenue

Revenue from the additional registration fee goes to the Motor Fuel Tax Abatement Fund, which the bill creates. The money in that Fund must be used in the same manner as revenue from the state motor fuel tax.⁸

As required by Article XII, Section 5a of the Ohio Constitution, nearly all revenue from the motor fuel tax is used by the state and local governments solely for road and highway purposes, including construction, maintenance, traffic control systems, various other highway-related purposes, and the retirement of debt issued for such purposes. A small percentage of the revenue is attributed to fuel for boats or other water-going vessels, and that part of the revenue is used for various waterway-related purposes.

Administration of fuel tax reduction card program

Both the Registrar of Motor Vehicles and the Tax Commissioner have roles in administering the fuel tax reduction card program.

The Registrar is required to adopt rules for the implementation of the program. The Registrar may cancel a card or order one to be seized by law enforcement. In such cases, the owner may appeal the action to the Registrar. If the Registrar refuses to reinstate the card, the owner may appeal to the proper Court of Common Pleas.⁹

The Tax Commissioner, in consultation with the Registrar, must establish the criteria that a retailer's equipment must meet in order to be approved to process fuel tax

⁷ R.C. 5735.10(B) and (C).

⁸ R.C. 4501.50.

⁹ R.C. 4503.106(C) and (D).

reduction cards. The Commissioner is also authorized to take any measures necessary to prevent the fraudulent use of cards.¹⁰

Penalties

The bill provides for the following penalties related to the use of fuel tax reduction cards:

(1) For the creation or reproduction of a fuel tax reduction card, or for tampering with a card, a felony of the fifth degree. If a person has a prior conviction for the same offense, the penalty increases to a felony of the fourth degree.¹¹

(2) For the use of a card for a vehicle other than the one for which the card was issued, a misdemeanor of the fourth degree. With each prior conviction, the penalty increases by one degree. If a person has four or more prior convictions, the penalty is a felony of the fifth degree.¹²

COMMENT

The program outlined in the bill, under which businesses that register vehicles in Ohio automatically receive a card that reduces the price of motor fuel they purchase, while businesses registering vehicles in another state must take the separate step of purchasing a card (or else pay higher fuel prices), possibly implicates the dormant Commerce Clause and the Privileges and Immunities Clause of the U.S. Constitution.

Commerce Clause

The dormant Commerce Clause prohibits "discrimination against interstate commerce," which occurs when a state law benefits in-state economic interests by burdening out-of-state competitors.¹³ Under Supreme Court jurisprudence, a tax scheme "that favors in-state business over out-of-state business for no other reason than the location of its business is prohibited by the Commerce Clause."¹⁴ An out-of-state business registering its vehicles in its home state and faced with having to either purchase the fuel price reduction card or pay full price for fuel bought in Ohio would

¹⁰ R.C. 5735.50(E).

¹¹ R.C. 4503.106(E).

¹² R.C. 5735.50(F).

¹³ *Dept. of Revenue of Kentucky v. Davis* (2008), 553 U.S. 328, 337-38; *Oregon Waste Systems, Inc. v. Dept. of Environmental Quality of Oregon* (1994), 511 U.S. 93, 99.

¹⁴ *American Trucking Assn's v. Scheiner*, 483 U.S. 266, 285 (1987).



have to show that this forced choice discriminates against it relative to its Ohio-based competitors, who automatically receive the price reduction with their Ohio vehicle registration. The outcome of such a case is uncertain, as there appear to be no clearly analogous precedents. Even if a court were to determine that the law is discriminatory, the court may uphold the law if it found that the law advanced a legitimate state purpose that could not adequately be served by nondiscriminatory purposes.

Privileges and Immunities Clause

While the dormant Commerce Clause addresses disparate treatment solely in the commercial realm, the Privileges and Immunities Clause is concerned with disparate treatment of individuals in both economic and noneconomic situations. The Clause provides that the "Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." The Supreme Court has interpreted this clause to prohibit states from discriminating against nonresidents' rights to travel between states¹⁵ and to engage in commercial activity in any state "on terms of substantial equality" with the citizens of that state.¹⁶ If a court found that the proposed law violated either right, the court may uphold the law if substantial reasons existed for the discrimination and the discrimination bore a close relation to such reasons.

HISTORY

ACTION	DATE
Introduced	03-21-17

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¹⁵ See, e.g., *Saenz v. Roe*, 526 U.S. 489, 498 (1999).

¹⁶ *Supreme Court of Virginia v. Friedman*, 487 U.S. 59, 66 (1988).

