



## Oil tax would harm rural economy

A gross receipts tax on motor fuel sales, part of Governor Doyle's \$63 billion state budget package, would likely eliminate distribution of cooperative patronage capital and harm grassroots economic reinvestment that could otherwise help revive our state's battered economy.

The next few weeks will tell the tale of whether the new tax survives review by the Legislature's Joint Finance Committee and amendment by the state Assembly and Senate. If it does, and if the Governor then signs it into law, millions of dollars that could be energizing local business investment and consumer spending will be pulled out of Wisconsin's rural communities and into the state treasury.

There, the money will be spent according to government's priorities. They won't necessarily be *bad* priorities, but they're unlikely to be the same ones as those of the people whose hard work and necessary purchases generated the money in the first place.

### **Devil in the details**

The troublesome provision of 2009 Assembly Bill 75, the two-year state budget bill, calls for assessing a tax on "annual gross receipts that are derived from the first sale in this state of motor vehicle fuel received by the supplier for sale in this state..."

The tax would be assessed on a graduated basis, beginning at one-half of one percent of annual gross receipts from \$15 million to \$74,999,999. For gross receipts from \$75 million to \$119,999,999, the tax rate rises to one and one-half percent. It then doubles to three percent on gross receipts in any amount from \$120,000,000 and up.

Fiscal analysts say the tax will produce \$272 million in annual revenues for state government, and the funds are to be deposited in the segregated transportation fund.

This does not inspire confidence. Segregated funds—revenues derived from taxation and fees related to specific activities and reserved for spending in support of those activities—have been routinely diverted during the past two decades by governors and legislatures of both parties, to patch holes in state budgets that grow increasingly difficult to balance.

The segregated transportation fund has been tapped for approximately \$1 billion over the past three state budgets to pay for spending unrelated to transportation.

Another, more modest example of what some have called bait-and-switch taxation may be found in the comparatively brief history of the utility public benefits fund. Over two consecutive biennia (2003-05 and 2005-07,) a total of \$102 million collected from natural gas and electric utility ratepayers to support energy conservation programs wound up financing other state spending, including income maintenance contracts under the Department of Health and Human Services.

After a multi-year struggle, the integrity of utility public benefits funds was finally secured in the fall of 2005 when a coalition (in which Wisconsin's electric cooperatives played a leading role,) lobbied successfully for statutory changes in the custody and disbursement of energy conservation dollars, as a condition of coalition support for renewable energy legislation.

The transportation fund and other segregated accounts might be in line for similar help but it is some way off at best. At this writing, two proposals putting segregated funds out of bounds for budget-balancing transfers have been introduced. They have bipartisan support. But as constitutional amendments, they must pass in

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## Call to action

Contact your state senator and representative and tell them to vote no on the oil tax.

To find your legislator and their contact information visit <http://www.legis.wisconsin.gov/w3asp/waml/waml.aspx>.

Or call the legislative hotline, toll-free at (800) 362-9472. A staff person will take a message and make sure it's delivered to the right legislator's office.

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## *Devil in the details* —continued from front—

two consecutive legislatures with an election intervening, and then win voter approval in a statewide referendum. As a practical matter, the earliest that process could be completed would be April 2011. By then, deliberations on the budget that succeeds the one now under consideration will be well underway.

In any case, this dilemma grows out of issues far broader than whether or not an oil gross receipts tax would perform as advertised. For well over a decade, people in both major political parties who are knowledgeable in the area of state finances have warned of a “structural deficit” built into Wisconsin budgets. The experience of the past several biennia tends to bear out their contention that this deficit is destined to grow bigger year after year, absent fundamental changes that, politically, no one may be willing to attempt.

It’s understandable that neither party would wish to be the first to advocate changes that would be highly controversial. It’s also reasonable to ask that piecemeal repairs to the status quo not do too much collateral damage.

## *Constitutional questions*

The proposed gross receipts tax contains “anti-pass-through” language that would supposedly protect retail consumers by forbidding an oil company to include the cost of the tax in the price of its product.

This is dubious consumer protection, on multiple grounds. First, it isn’t automatically clear anti-pass-through could be enforced. The obvious target is “big oil,” meaning companies with complex and far-flung operations and more ways to recover a business expense (for example, a tax liability,) than simply tacking it onto the price at the pump.

The companies are not obligated to do business in Wisconsin. They are entirely capable of directing supply of their products to other states—and 49 of those do not dress up their fuel taxes with anti-pass-through provisions. A tax motivating companies to send supplies to more receptive markets could tighten supply in Wisconsin, reduce the competitive pressures that moderate prices, and end up costing all Wisconsin consumers more, even if the tax is theoretically not being handed off to them.

Further, while headlines about enormous profits may have generated popular enthusiasm to “stick it to ‘em,” a gross receipts tax is unrelated to profits. It applies to total sales whether or not they result in profits, and regardless of the margin. It’s not inconceivable some companies might have profit margins lower than the tax rate.

Equally troublesome is the virtual certainty of costly litigation. It will be argued that anti-pass-through language runs afoul of the Commerce Clause (Article I, Section 8,) of the U.S. constitution, which reserves exclusively to Congress the power to regulate interstate commerce. The argument will be that Wisconsin’s law sets the state apart, erecting a barrier to transactions that occur throughout the United States and thus impermissibly interfering with the conduct of interstate commerce.

Similar anti-pass-through legislation adopted by the state of New York has already been found unconstitutional on grounds that the Commerce Clause doesn’t allow it. As long as two years ago, Wisconsin’s nonpartisan Legislative Fiscal Bureau raised red flags over the prospect of enacting a similarly-flawed provision here.

## *Wrong target, wrong time*

At first glance, the oil gross receipts tax may look like a political freebie; a chance to take an easy shot at a plump target and be seen as a champion of “the little guy.” In reality, it will be millions of “little guys” who pay the price when the so-called “anti-pass-through” provision turns out to be unenforceable and almost certainly—after a few millions of taxpayer dollars have been wasted in litigation—unconstitutional as well.

These are not favorable times to undertake such costly and ill-starred ventures for the sake of playing to popular sentiment. Nowadays, popular sentiment can hardly spare the time to indulge the illusion of punishing some unpopular interest. More practical matters are on people’s minds.

A modest increase in local consumer spending or a community-based investment in private business growth used to be a nice thing to have. Now it’s an absolutely crucial thing to have, and anything that diverts money away from such purposes will harm the very people whose willingness to take a chance on the future of their community is the only thing that can restore confidence and economic health.

If nothing else, the gross receipts tax will achieve that diversion of funds.

Cooperatives turn their net revenues—in a different setting these would be profits—back to their member-owners in the form of payments proportional to their patronage of the cooperative. Last year, the largest cooperative supplier of motor fuels in the U.S. returned more than \$20 million in patronage dividends to its members in Wisconsin.

Most of that money promptly finds its way back into the local economy, fueling the kind of consumer spending and reinvestment that’s so badly needed in a struggling economy. Forcing cooperatives to deplete their net income with a tax they can’t pass through—at least until the courts throw it out—will bring patronage distribution to a screeching halt.

The real tragedy is that the related local reinvestment and consumer spending would be halted too.

