

Gross Receipts Tax on Oil Companies

Gross Receipts Tax is Bad Tax Policy

- The proposed tax represents a 5 cent per gallon penalty for doing business in Wisconsin. In addition, it singles out one type of business with a prohibition against legitimate cost recovery of an external cost of doing business in this state.
- The proposed tax negatively impacts Wisconsin shareholders and retirees. Pension plans and retirement accounts constitute over 40% of major oil company stock holdings, including private pension funds (15%), federal and state pension funds (12%), and IRA's (14%). The State of Wisconsin Investment Board owns over \$400 million in ExxonMobil stock alone.
- The proposed tax negatively impacts Wisconsin's lone oil refinery in Superior and numerous Wisconsin based suppliers of motor vehicle fuel. Many of these businesses could be severely damaged by imposing a 2.5% tax penalty for bringing product into the state.
- This type of tax policy discourages the supply of fuel into the state and discourages investment in Wisconsin's supply infrastructure and employment.
- Wisconsin tax policy should not be used to erect economic development barriers. Nor should it be used to render the state an unattractive tax island with respect to the sale of a market driven, international commodity.
- The stated rationale for targeting oil companies is their high level of profits. However, for the first three quarters of 2006, the oil and gas industry's earnings averaged 9.4 cents per dollar of sales compared to 9.6 cents on the dollar for all manufacturing industries (excluding the financially stressed auto industry). Using earnings as a policy litmus test puts all Wisconsin industries at risk.

The Tax is an Unreliable Revenue Source for the Segregated Transportation Fund

- The non-pass-through provision is unworkable and may be illegal. No other state has successfully implemented such a tax with a provision that prohibits the supplier from recouping the business cost of the tax. This precedent setting tax may result in litigation, which could put the revenue stream to the Transportation Fund in jeopardy.
- The U.S. Supreme Court has not addressed the issue of whether a pass-through prohibition violates the Commerce Clause. At least one lower court has. In 1983, the New York Appellate Division found that such a provision *did* violate the Commerce Clause, found the provision void, and concluded the State would have to refund taxes collected for any period during which the provision was held invalid. A parallel court determination on this Wisconsin tax could create a liability hole in the Transportation Fund approaching \$1 billion.

- Wisconsin is already too reliant on fuel taxes to support the state's transportation infrastructure. The current gas tax is the single largest state revenue source for the transportation fund at 63.2% of gross revenues in 2005-06. The proposed tax is ultimately a 5 cent per gallon increase in the gas tax and would result in Wisconsin going from the 7th to the 4th highest gas tax state in the country.

The Proposed Tax is Unworkable and Unenforceable

- As reported in the Wisconsin State Journal, February 18, 2007 — *“...experts were skeptical whether state auditors could prove that rising gas prices reflected the costs of the tax, as opposed to some other factor in a complex global market.” “One problem for the state in shielding consumers, economists said, is that oil and gas prices bounce up and down according to a dizzying array of factors — from unrest in Nigeria to problems at Gulf Coast refineries to holiday traffic.”*
- Attempting to insulate Wisconsin consumers from the cost of the tax by prohibiting oil suppliers from passing it on fails to recognize that retail prices are the product of many other decision-makers and cost components, both upstream and downstream of the oil companies. It is hard to imagine how regulating one aspect of one cost component of price, imposed on one type of company in the overall delivery system, will effectively insulate Wisconsin consumers from price adjustments at the point of a retail sale.

The Proposed Tax Creates Negative Implications for Fuel Supply in Wisconsin

- The Director of the Oil Pricing Information Service (OPIS) recently stated that the tax “will likely increase the price of gas” and “could result in supply shortages for Wisconsin.” When and where possible, and especially during times of tight supply, fuel supplies will logically flow to the market offering the best return on investment. A 5 cent per gallon penalty for doing business in Wisconsin could have the effect of depressing supply in a state that is already at the end of the pipeline system. Constrained supply has the effect of increasing demand and consumer prices.
- Oil companies will certainly honor supply contracts already in place. However, the proposed tax could serve as a disincentive for expanding operations and could impact future supply agreements in Wisconsin, or otherwise disrupt supply.
- Roughly one-fourth of all fuel purchased by retail marketers is sold on a non-guaranteed “spot” basis. These “spot” marketers are most vulnerable when the flow of petroleum to Wisconsin is disrupted.

Summary: The proposed gross receipts tax on oil suppliers is a punitive tax that discourages petroleum supply investment in Wisconsin, creates an uncertain funding mechanism for the Transportation Fund, and does not effectively protect Wisconsin consumers against price increases.