

State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1530/2

JK:jld:pg

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RM mtr

DOA:.....Kornely, BB0352 - Oil company assessment

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 1-25-07  
Do NOT Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill imposes an assessment on a motor vehicle fuel supplier at the rate of 2.25 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The amount of the assessment may not be added to the selling price of any subsequent sale or distribution of the motor vehicle fuel and the supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 25.40 (1) (bd) of the statutes is created to read:

1 25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

2 SECTION 2. Chapter 77 (title) of the statutes is amended to read:

3 CHAPTER 77

4 TAXATION OF FOREST CROPLANDS;

5 REAL ESTATE TRANSFER FEES;

6 SALES AND USE TAXES; COUNTY

7 AND SPECIAL DISTRICT SALES

8 AND USE TAXES; MANAGED FOREST

9 LAND; TEMPORARY RECYCLING

10 SURCHARGE; LOCAL FOOD AND

11 BEVERAGE TAX; LOCAL RENTAL

12 CAR TAX; PREMIER RESORT AREA

13 TAXES; STATE RENTAL VEHICLE FEE;

14 DRY CLEANING FEES; REGIONAL

15 TRANSIT AUTHORITY FEE;

16 OIL COMPANY ASSESSMENT

17 SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is  
18 created to read:

19 CHAPTER 77

20 SUBCHAPTER XIV

21 OIL COMPANY ASSESSMENT

22 77.998 Definitions. In this subchapter:

23 (1) "Department" means the department of revenue.

24 (2) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

25 (3) "Supplier" has the meaning given in s. 78.005 (14).

1           **77.9981 Imposition.** For the privilege of doing business in this state, there  
2 is imposed an assessment on each supplier at the rate of 2.25 percent of the supplier's  
3 gross receipts in each calendar quarter that are derived from the first sale of motor  
4 vehicle fuel in this state. The amount of the assessment shall not be added to the  
5 selling price of any subsequent sale or distribution of the motor vehicle fuel ~~and the~~

6 ~~supplier shall take any action to increase or influence the selling price of motor vehicle~~  
7 ~~fuel in order to recover the amount of the assessment.~~ *who is subject to the assessment imposed under this subchapter*

8           **77.9982 Administration.** (1) The department shall administer the  
9 assessment under this subchapter and may take any action, conduct any proceeding,  
10 and impose interest and penalties.

11           (2) The assessments imposed under this subchapter for each calendar quarter  
12 are due and payable on the last day of the month next succeeding the calendar  
13 quarter for which the assessments are imposed, as provided by the department by  
14 rule.

15           (3) For purposes of determining the amount of the assessment imposed under  
16 this subchapter, income derived from the first sale in this state of gasoline consisting  
17 of at least 85 percent ethanol is not included in the supplier's gross receipts.

18           (4) In addition to any other audits the department conducts to administer and  
19 <sup>(S) (R)</sup> enforce this subchapter, the department may audit any supplier who is subject to the  
20 assessment imposed under this subchapter to determine whether the supplier has  
21 taken any action to increase or influence the selling price of motor vehicle fuel in  
22 order to recover the amount of the assessment. Annually, the department shall  
23 submit a report to the governor and the legislature, as provided under s. 13.172 (2),  
24 that contains information on all audits conducted under this subsection in the  
25 previous year.

(4) (R)

68  
1 (5) Any supplier who is subject to the assessment imposed under this  
2 subchapter and who takes any action to increase or influence the selling price of  
3 motor vehicle fuel in order to recover the amount of the assessment is subject to a  
4 penalty in an amount that is equal to 50 percent of the amount of the assessment that  
5 the supplier paid in the calendar quarter immediately preceding the date of any such  
6 action.

70  
7 (6) Sections. 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and  
8 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to  
9 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.  
10 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,  
11 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under  
12 ch. 71 apply to the assessment under this subchapter.

78  
13 (7) The department shall deposit all revenue collected under this subchapter  
14 into the transportation fund.

15 **SECTION 9141. Nonstatutory provisions; Revenue.**

16 (1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of  
17 revenue may promulgate emergency rules under section 227.24 of the statutes  
18 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.  
19 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department  
20 of revenue is not required to provide evidence that promulgating a rule under this  
21 subsection as an emergency rule is necessary for the preservation of the public peace,  
22 health, safety, or welfare and is not required to provide a finding of emergency for a  
23 rule promulgated under this subsection.

24 **SECTION 9341. Initial applicability; Revenue.**



**Kreye, Joseph**

---

**From:** Kornely, Sara - DOA  
**Sent:** Saturday, January 27, 2007 5:31 PM  
**To:** Kreye, Joseph  
**Subject:** More changes

Hi Joe --

A couple more carve-outs on the oil company assessment:

1. We would like fuel exemptions similar to those contained in s. 78.01(2), (2m) and (2p) to apply to fuel subject to the oil company assessment.
2. On the E-85, we would like to exempt only the percentage of the gallons that is ethanol.
3. In addition to the E-85 carve-out, we also would like to carve out the "bio" portion of "neat biodiesel."

If you have any questions, give me a shout. Thanks!

Sara Kornely  
Division of Executive Budget & Finance  
Department of Administration  
101 East Wilson Street, 10th Floor  
P.O. Box 7864  
Madison, WI 53707-7864  
phone: 608-266-1039  
fax: 608-267-0372  
email: sara.kornely@wisconsin.gov

**Kreye, Joseph**

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**From:** Kornely, Sara - DOA  
**Sent:** Saturday, January 27, 2007 2:00 PM  
**To:** Kreye, Joseph  
**Subject:** Oil Company Assessment

*Comments revised  
and 50% of the  
about gain.*

Hi Joe –

DOR sent over some comments on the oil company assessment – I think we'll have to chew over some of them here, but one of the things they pointed out is that as currently drafted, the penalty is 50% of the tax paid in the prior quarter, and thus if there was no tax in a prior quarter, a company may get off with no penalty. Do you have any thoughts on a better penalty system?

Also, one big issue DOR is raising is that a use tax may be necessary to capture all fuel coming in from out of state – do you think the addition of the export language we talked about solves this problem? Or do we need to draft a use tax, too?

Thanks!

Sara Kornely  
Division of Executive Budget & Finance  
Department of Administration  
101 East Wilson Street, 10th Floor  
P.O. Box 7864  
Madison, WI 53707-7864  
phone: 608-266-1039  
fax: 608-267-0372  
email: sara.kornely@wisconsin.gov

**From:** Kornely, Sara - DOA  
**Sent:** Saturday, January 27, 2007 5:31 PM  
**To:** Kreye, Joseph  
**Subject:** More changes

Hi Joe –

A couple more carve-outs on the oil company assessment:

1. We would like fuel exemptions similar to those contained in s. 78.01(2), (2m) and (2p) to apply to fuel subject to the oil company assessment.
2. On the E-85, we would like to exempt only the percentage of the gallons that is ethanol.
3. In addition to the E-85 carve-out, we also would like to carve out the "bio" portion of "neat biodiesel."

If you have any questions, give me a shout. Thanks!

Sara Kornely  
Division of Executive Budget & Finance  
Department of Administration  
101 East Wilson Street, 10th Floor  
P.O. Box 7864  
Madison, WI 53707-7864  
phone: 608-266-1039  
fax: 608-267-0372  
email: sara.kornely@wisconsin.gov



**Kreye, Joseph**

---

**From:** Kornely, Sara - DOA  
**Sent:** Sunday, January 28, 2007 9:39 AM  
**To:** Kreye, Joseph  
**Subject:** RE: More changes

From the Department of Energy:

Biodiesel is a renewable diesel replacement fuel that is manufactured from domestically produced oils such as soybean oil, recycled cooking oils, or animal fats. To manufacture biodiesel, these fats and oils are chemically reacted with a short chain alcohol (such as methanol) and a catalyst to produce biodiesel and a glycerin co-product. Biodiesel can be used alone (B100) or blended with petroleum diesel in any proportion.

From the National Biodiesel Board:

For entities seeking to adopt a definition of biodiesel for purposes such as federal or state statute, state or national divisions of weights and measures, or for any other purpose, the official definition consistent with other federal and state laws and Original Equipment Manufacturer (OEM) guidelines is as follows:

Biodiesel is defined as mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats which conform to ASTM D6751 specifications for use in diesel engines. Biodiesel refers to the pure fuel before blending with diesel fuel. Biodiesel blends are denoted as, "BXX" with "XX" representing the percentage of biodiesel contained in the blend (ie: B20 is 20% biodiesel, 80% petroleum diesel).

So it looks to me like our current definition of "biodiesel" actually is the definition of neat biodiesel, and therefore we can just cross reference? Our statute doesn't talk about the ASTM D6751 specifications, but I think the important thing is that it does not seem to get at the biodiesel/petroleum diesel blends.

Sara Kornely  
Dept. of Administration  
608-266-1039

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**From:** Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]  
**Sent:** Sunday, January 28, 2007 9:16 AM  
**To:** Kornely, Sara - DOA  
**Subject:** RE: More changes

Sara,

I also don't know how you "carve out" the "bio" part of biodiesel for an exemption. I assume that the supplier derives income from the sale of the biodiesel, not the sale of the "monoalkyl esters of long chain fatty acids derived from vegetable oils and animal fats." See the definition of "biodiesel fuel" under s. 168.41 (2m) (a).

Joe

**Joseph T. Kreye**  
Senior Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1530/3

JK:jld:rs

TWj

DOA:.....Kornely, BB0352 - Oil company assessment

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1-28-07

bioethanol fuel or ethanol blended with gasoline to create

DO NOT GEN

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill imposes an assessment on a motor vehicle fuel supplier at the rate of 2.25 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The amount of the assessment may not be added to the selling price of any subsequent sale or distribution of the motor vehicle fuel and the supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 25.40 (1) (bd) of the statutes is created to read:

25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

SECTION 2. Chapter 77 (title) of the statutes is amended to read:

**CHAPTER 77**

**TAXATION OF FOREST CROPLANDS;**

**REAL ESTATE TRANSFER FEES;**

**SALES AND USE TAXES; COUNTY**

**AND SPECIAL DISTRICT SALES**

**AND USE TAXES; MANAGED FOREST**

**LAND; TEMPORARY RECYCLING**

**SURCHARGE; LOCAL FOOD AND**

**BEVERAGE TAX; LOCAL RENTAL**

**CAR TAX; PREMIER RESORT AREA**

**TAXES; STATE RENTAL VEHICLE FEE;**

**DRY CLEANING FEES; REGIONAL**

**TRANSIT AUTHORITY FEE;**

**OIL COMPANY ASSESSMENT**

SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is created to read:

**CHAPTER 77**

**SUBCHAPTER XIV**

**OIL COMPANY ASSESSMENT**

**77.998 Definitions.** In this subchapter:

(1) "Department" means the department of revenue.

(2) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

(3) "Supplier" has the meaning given in s. 78.005 (14).

*Handwritten notes:*  
A large handwritten '3' is written to the left of the list items.  
A handwritten note at the bottom reads: "(1) ↓ producer fuel has the meaning given in sq/680/4 (2m)(a) 0".  
There are also some small handwritten marks and symbols near the list items.

*received by the supplier for sale in this state, for sale for export in this state, or for export to this state*

1           **77.9981 Imposition.** For the privilege of doing business in this state, there  
 2 is imposed an assessment on each supplier at the rate of 2.25 percent of the supplier's  
 3 gross receipts in each calendar quarter that are derived from the first sale <sup>in this state</sup> of motor  
 4 vehicle fuel in this state. The amount of the assessment shall not be added to the  
 5 selling price of any subsequent sale or distribution of the motor vehicle fuel.

6           **77.9982 Administration.** (1) The department shall administer the  
 7 assessment under this subchapter and may take any action, conduct any proceeding,  
 8 and impose interest and penalties.

9           (2) The assessments imposed under this subchapter for each calendar quarter  
 10 are due and payable on the last day of the month next succeeding the calendar  
 11 quarter for which the assessments are imposed, as provided by the department by  
 12 rule.

13           (3) For purposes of determining the amount of the assessment imposed under  
 14 this subchapter, income derived from the first sale in this state of gasoline consisting  
 15 of at least 85 percent ethanol is not included in the supplier's gross receipts. *(bio-diesel fuel or ethanol blended with gasoline to create)*

16           (4) No supplier who is subject to the assessment imposed under this subchapter  
 17 shall take any action to increase or influence the selling price of motor vehicle fuel  
 18 in order to recover the amount of the assessment. *(INSERT 3-18)*

19           (5) In addition to any other audits the department conducts to administer and  
 20 enforce this subchapter, the department may audit any supplier who is subject to the  
 21 assessment imposed under this subchapter to determine whether the supplier has  
 22 taken any action to increase or influence the selling price of motor vehicle fuel in  
 23 order to recover the amount of the assessment. Annually, the department shall  
 24 submit a report to the governor and the legislature, as provided under s. 13.172 (2),

1 that contains information on all audits conducted under this subsection in the  
2 previous year.

3 (6) Any supplier who is subject to the assessment imposed under this  
4 subchapter and who takes any action to increase or influence the selling price of  
5 motor vehicle fuel in order to recover the amount of the assessment is subject to a  
6 penalty in an amount that is equal to 50 percent of the amount of the assessment that  
7 the supplier paid in the calendar quarter immediately preceding the date of any such  
8 action.

9 (7) <sup>(a)</sup> Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and  
10 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to  
11 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.  
12 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,  
13 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under  
14 ch. 71 apply to the assessment under this subchapter.

15 (8) The department shall deposit all revenue collected under this subchapter  
16 into the transportation fund.

17 **SECTION 9141. Nonstatutory provisions; Revenue.**

18 (1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of  
19 revenue may promulgate emergency rules under section 227.24 of the statutes  
20 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.  
21 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department  
22 of revenue is not required to provide evidence that promulgating a rule under this  
23 subsection as an emergency rule is necessary for the preservation of the public peace,  
24 health, safety, or welfare and is not required to provide a finding of emergency for a  
25 rule promulgated under this subsection.



Insert 3 - 15

1 *msjt* For purposes of determining the amount of the assessment imposed under this  
2 subchapter, with regard to a transfer of motor vehicle fuel between related parties,  
3 the point of first sale in this state is the date of such transfer and the gross receipts  
4 are calculated on a monthly basis using an index determined by rule by the  
5 department.

Insert 3 - 18

6 *msjt* A supplier who takes any action to increase or influence the selling price of  
7 motor vehicle fuel *in order* to recover the amount of the assessment is subject to a  
8 penalty equal to 50 percent of the gain the supplier received from any increase in the  
9 selling price or imprisonment of not more than 6 months, or both.

Insert 3 - 18

10 (b) Sections 78.01 (2), (2m), (2p), (2r), and (2s), *it applies* as they apply to the tax imposed  
11 under s. 78.01 (1), *applies* apply to the assessment imposed under this subchapter.



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1530/4  
JK:jld&wj:rs

RM mtr

DOA:.....Kornely, BB0352 - Oil company assessment

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1-29-07

don't gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

→ This bill imposes an assessment on a motor vehicle fuel supplier at the rate of 2.25 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The amount of the assessment may not be added to the selling price of any subsequent sale or distribution of the motor vehicle fuel and the supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 25.40 (1) (bd) of the statutes is created to read:



1 25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

2 SECTION 2. Chapter 77 (title) of the statutes is amended to read:

3 **CHAPTER 77**

4 **TAXATION OF FOREST CROPLANDS;**

5 **REAL ESTATE TRANSFER FEES;**

6 **SALES AND USE TAXES; COUNTY**

7 **AND SPECIAL DISTRICT SALES**

8 **AND USE TAXES; MANAGED FOREST**

9 **LAND; TEMPORARY RECYCLING**

10 **SURCHARGE; LOCAL FOOD AND**

11 **BEVERAGE TAX; LOCAL RENTAL**

12 **CAR TAX; PREMIER RESORT AREA**

13 **TAXES; STATE RENTAL VEHICLE FEE;**

14 **DRY CLEANING FEES; REGIONAL**

15 **TRANSIT AUTHORITY FEE;**

16 **OIL COMPANY ASSESSMENT**

17 SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is  
18 created to read:

19 **CHAPTER 77**

20 **SUBCHAPTER XIV**

21 **OIL COMPANY ASSESSMENT**

22 **77.998 Definitions.** In this subchapter:

23 (1) "Biodiesel fuel" has the meaning given in s. 168.14 (2m) (a).

24 (2) "Department" means the department of revenue.

25 (3) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

1 (4) "Supplier" has the meaning given in s. 78.005 (14).

2 **77.9981 Imposition.** For the privilege of doing business in this state, there  
3 is imposed an assessment on each supplier at the rate of ~~2.25~~<sup>2.5</sup> percent of the supplier's  
4 gross receipts in each calendar quarter that are derived from the first sale in this  
5 state of motor vehicle fuel received by the supplier for sale in this state, for sale or  
6 for export in this state, or for export to this state. The amount of the assessment shall  
7 not be added to the selling price of any subsequent sale or distribution of the motor  
8 vehicle fuel.

9 **77.9982 Administration.** (1) The department shall administer the  
10 assessment under this subchapter and may take any action, conduct any proceeding,  
11 and impose interest and penalties.

12 (2) The assessments imposed under this subchapter for each calendar quarter  
13 are due and payable on the last day of the month next succeeding the calendar  
14 quarter for which the assessments are imposed, as provided by the department by  
15 rule.

16 (3) For purposes of determining the amount of the assessment imposed under  
17 this subchapter, income derived from the first sale in this state of biodiesel fuel or  
18 or of ethanol blended with gasoline to create gasoline consisting of at least 85 percent  
19 ethanol is not included in the supplier's gross receipts. For purposes of determining  
20 the amount of the assessment imposed under this subchapter, with regard to a  
21 transfer of motor vehicle fuel between related parties, the point of first sale in this  
22 state is the date of such transfer, and the gross receipts are calculated on a monthly  
23 basis using an index determined by rule by the department.

24 (4) No supplier who is subject to the assessment imposed under this subchapter  
25 shall take any action to increase or influence the selling price of motor vehicle fuel

1 in order to recover the amount of the assessment. A supplier who takes any action  
2 to increase or influence the selling price of motor vehicle fuel to recover the amount  
3 of the assessment is subject to a penalty equal to 50 percent of the gain the supplier  
4 received from any increase in the selling price or imprisonment of not more than 6  
5 months, or both.

6 (5) In addition to any other audits the department conducts to administer and  
7 enforce this subchapter, the department may audit any supplier who is subject to the  
8 assessment imposed under this subchapter to determine whether the supplier has  
9 taken any action to increase or influence the selling price of motor vehicle fuel in  
10 order to recover the amount of the assessment. Annually, the department shall  
11 submit a report to the governor and the legislature, as provided under s. 13.172 (2),  
12 that contains information on all audits conducted under this subsection in the  
13 previous year.

14 (6) Any supplier who is subject to the assessment imposed under this  
15 subchapter and who takes any action to increase or influence the selling price of  
16 motor vehicle fuel in order to recover the amount of the assessment is subject to a  
17 penalty in an amount that is equal to 50 percent of the amount of the assessment that  
18 the supplier paid in the calendar quarter immediately preceding the date of any such  
19 action.

20 (7)(a) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and  
21 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to  
22 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.  
23 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,  
24 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under  
25 ch. 71 apply to the assessment under this subchapter.

1 (b) Section 78.01 (2), (2m), (2p), (2r), and (2s), as it applies to the tax imposed  
2 under s. 78.01 (1), applies to the assessment imposed under this subchapter.

3 (8) The department shall deposit all revenue collected under this subchapter  
4 into the transportation fund.

5 **SECTION 9141. Nonstatutory provisions; Revenue.**

6 (1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of  
7 revenue may promulgate emergency rules under section 227.24 of the statutes  
8 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.  
9 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department  
10 of revenue is not required to provide evidence that promulgating a rule under this  
11 subsection as an emergency rule is necessary for the preservation of the public peace,  
12 health, safety, or welfare and is not required to provide a finding of emergency for a  
13 rule promulgated under this subsection.

14 **SECTION 9341. Initial applicability; Revenue.**

15 (1) OIL COMPANY ASSESSMENT. The treatment of section 25.40 (1) (bd), subchapter  
16 XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the sales of  
17 motor vehicle fuel on the first day of the first calendar quarter beginning after the  
18 effective date of this subsection.

19 (END)

## Kreye, Joseph

---

**From:** Kornely, Sara - DOA  
**Sent:** Tuesday, January 30, 2007 3:45 PM  
**To:** Kreye, Joseph  
**Cc:** Grinde, Kirsten - DOA  
**Subject:** FW: Analysis of Oil Company Bill

**Importance:** High

**Attachments:** 2007 5- leg-oil company assessment.doc

Hi Joe –

Attached below you will find written comments on the most recent draft from DOR. A few of their comments we do not want to address (specifically, I don't think we need to address the arbitrary nature of the audits and the confidentiality of taxpayer information, and we do not want to change the effective date). However, some of their other suggestions look ok, and they have provided specific language. Can you work with these?

Also, in a separate email we received from them, they expressed concern that the current statutory definition of biodiesel could be construed to include blends in addition to "neat" biodiesel. This is not my reading, but perhaps there is a way to simply say that we intend to exclude biodiesel in its pure form before blending from inclusion in gallons/barrels subject to tax.

Questions or comments, let me know – thanks!

Sara Kornely  
Dept. of Administration  
608-266-1039

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**From:** Koskinen, John - DOA  
**Sent:** Tuesday, January 30, 2007 3:20 PM  
**To:** Kornely, Sara - DOA  
**Subject:** FW: Analysis of Oil Company Bill  
**Importance:** High

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**From:** Crane, Lili B [<mailto:lili.crane@dor.state.wi.us>]  
**Sent:** Tuesday, January 30, 2007 12:22 PM  
**To:** Koskinen, John - DOA  
**Cc:** Hardt, Diane L - DOR  
**Subject:** FW: Analysis of Oil Company Bill  
**Importance:** High

John, here's our comments on Draft #5. Please send future drafts directly to me if you need quick turn-around. Thanks!



2007 5- leg-oil  
company assess...



**Note:** A minimum amount of such purchases subject to tax may be inserted so that small businesses are not affected.

**B. Arbitrary Nature of Audits**

Sec. 77.9982(4) provides that no supplier shall take any action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. A supplier could argue that any number of factors other than the oil company assessment were the cause of a price increase. Prices are determined by a complex, interdependent set of economic factors. The Department's auditors may have no rational basis to isolate the cause of a price increase as the oil company assessment. The supplier may recover the assessment from purchasers by a gradual increase in the price, and in some cases may not be able to break down all the reasons why the price increased. Therefore, actions to penalize suppliers for passing the tax through to purchasers may not be sustained.

**C. Technical Corrections to Definition of "First Sale in This State"**

It appears that the intent of the bill is to define "first sale in this state" in sec. 77.9981, with language similar to that of sec. 78.01(1). The language in the LRB draft contains typographical errors which make this definition unclear. The following corrections are recommended:

*"...from the first sale in this state of motor vehicle fuel received by the supplier for sale in this state, for sale ~~or~~ for export ~~in~~ to this state, or for export to this state."*

**D. Definition of "Related Parties"**

Sec. 77.9982 provides that the assessment may apply to a transfer between related parties. "Related parties" should be defined. Section 267(b) of the Internal Revenue Code lists several relationships that constitute "related parties" for purposes of limiting losses with respect to related taxpayers. The same definition is recommended here. In the bill, the definition could read:

*"Related parties are persons or entities, or some combination thereof, which constitute a relationship to which section 267 of the internal revenue code applies."*

**E. Clarification of Sales Between Related Parties**

In sec. 77.9982(3), the language "*with regard to a transfer of motor vehicle fuel between related parties, the point of first sale in this state is the date of such transfer*" is overly broad. It appears to imply that the same fuel may be taxed more than once. If the intent is to ensure that the receipts (or deemed receipts) from the "first sale in this state" are taxed only once, the language should read as follows:

*"With regard to a transfer of motor vehicle fuel ~~between related parties~~ from a supplier to a related party, the point of first sale in this state is the date of such transfer, and the gross receipts are calculated on a monthly basis using an index determined by rule by the department. For purposes of this paragraph, there cannot more than one point of first sale in this state."*

#### F. Penalty Language

Sec. 77.9982(4) provides that if a supplier takes action to increase or influence the selling price, the supplier is subject to a penalty of 50 percent of the "gain the supplier received from any increase..." "Gain" has a special meaning in financial and tax accounting which makes this provision unclear. Clearer language would impose a penalty of "50 percent of the total amount of tax passed through to the purchaser." Further, this paragraph imposes a penalty of imprisonment of not more than 6 months. The Department of Revenue cannot prosecute. The following additional language is needed:

✓ "Prosecutions by attorney general. Upon request by the secretary of revenue, the attorney general may represent this state or assist a district attorney in prosecuting any case arising under this subchapter."

#### G. Provisions of sec. 78.01(2), (2m), (2p), (2r), (2s)

✓ The bill adopts these provisions of the motor vehicle fuel excise tax statutes. However, these provisions do not seem consistent with the bill's intent. Secs. 78.01(2r) and (2s) are only relevant for taxes that are passed down to the purchaser. Further, if the intent is to tax only the suppliers and not pass any of the tax down to the purchaser, exemptions based on how the purchaser will use the fuel do not seem relevant. The only provisions in the sections cited above that appear consistent with this bill's intent are sec. 78.01(2)(a) and sec. 78.01(2m)(a), which exempt gasoline and diesel exported outside Wisconsin, and possibly sec. 78.01(2b) and 78.01(2m)(b), which exempt fuel sold to the U.S. Government.

#### H. Confidentiality of Taxpayer Information

Sec. 77.9982(5) provides that the department shall annually submit a report to the governor and the legislature containing information on all oil company assessment audits conducted in the previous year. Sec. 71.78, Wis. Stats., restricts the type of information the department would be authorized to include in such a report, absent a specific information sharing agreement. Such agreement would further restrict sharing of this information to persons authorized by the agreement.

5. **Effective date problems, if any, including transitional problems:**  Yes  No  
(If yes, describe problem and suggested effective date or transitional language needed.)

The effective date is the first day of the first calendar quarter beginning after the effective date (date of publication). The department will not have sufficient time to develop forms and implement the processes necessary to administer the tax, especially if the effective date is late in the quarter. A better alternative would be the first day of the second calendar quarter beginning after the effective date.





State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1530/5  
JK:jld&wj:rs

stays ↑  
RMK

DOA:.....Kornely, BB0352 - Oil company assessment

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 1-30-07  
D-N

DO NOT GEN

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill imposes an assessment on a motor vehicle fuel supplier at the rate of 2 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The amount of the assessment may not be added to the selling price of any subsequent sale or distribution of the motor vehicle fuel and the supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 25.40 (1) (bd) of the statutes is created to read:

25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

SECTION 2. Chapter 77 (title) of the statutes is amended to read:

**CHAPTER 77**

**TAXATION OF FOREST CROPLANDS;**

**REAL ESTATE TRANSFER FEES;**

**SALES AND USE TAXES; COUNTY**

**AND SPECIAL DISTRICT SALES**

**AND USE TAXES; MANAGED FOREST**

**LAND; TEMPORARY RECYCLING**

**SURCHARGE; LOCAL FOOD AND**

**BEVERAGE TAX; LOCAL RENTAL**

**CAR TAX; PREMIER RESORT AREA**

**TAXES; STATE RENTAL VEHICLE FEE;**

**DRY CLEANING FEES; REGIONAL**

**TRANSIT AUTHORITY FEE;**

**OIL COMPANY ASSESSMENT**

SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is created to read:

**CHAPTER 77**

**SUBCHAPTER XIV**

**OIL COMPANY ASSESSMENT**

**77.998 Definitions.** In this subchapter:

(1) "Biodiesel fuel" ~~has the meaning given~~ *means biodiesel fuel, as defined* in s. 168.14 (2m) (a).

(2) "Department" means the department of revenue.

(3) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

(4) <sup>(B)</sup> ~~Related party~~ *means a person whose relationship with the supplier is described under section 267(b) of the Internal Revenue Code*

*that is not blended petroleum product*

*Terminal operator has the meaning given in*

*78.005 (16)*

1 (4) "Supplier" has the meaning given in s. 78.005 (14).

2 **77.9981 Imposition.** For the privilege of doing business in this state, there  
3 is imposed an assessment on each supplier at the rate of 2 percent of the supplier's  
4 gross receipts in each calendar quarter that are derived from the first sale in this  
5 state of motor vehicle fuel received by the supplier for sale in this state, for sale  
6 for export <sup>to</sup> in this state, or for export to this state. The amount of the assessment shall  
7 not be added to the selling price of any subsequent sale or distribution of the motor  
8 vehicle fuel.

9 **77.9982 Administration.** (1) The department shall administer the  
10 assessment under this subchapter and may take any action, conduct any proceeding,  
11 and impose interest and penalties.

12 (2) The assessments imposed under this subchapter for each calendar quarter  
13 are due and payable on the last day of the month next succeeding the calendar  
14 quarter for which the assessments are imposed, as provided by the department by  
15 rule.

16 (3) For purposes of determining the amount of the assessment imposed under  
17 this subchapter, income derived from the first sale in this state of biodiesel fuel or  
18 or of ethanol blended with gasoline to create gasoline consisting of at least 85 percent  
19 ethanol is not included in the supplier's gross receipts. For purposes of determining  
20 the amount of the assessment imposed under this subchapter, with regard to a  
21 transfer of motor vehicle fuel <sup>from a supplier to a party</sup> ~~between~~ related parties, the point of first sale in this  
22 state is the date of such transfer, and the gross receipts are calculated on a monthly  
23 basis using an index determined by rule by the department.

24 (4) No supplier who is subject to the assessment imposed under this subchapter  
25 shall take any action to increase or influence the selling price of motor vehicle fuel

*For purposes of this subchapter, there is only one point of first sale in this state with regard to the sale of the same motor vehicle fuel*

*INSERT 3-8*

*No 3*

*(5) at the secretary of revenue's request, the attorney general may represent this state, or assist a district attorney, in prosecuting any case arising under this subchapter*

1 in order to recover the amount of the assessment. A supplier who takes any action  
2 to increase or influence the selling price of motor vehicle fuel to recover the amount  
3 of the assessment is subject to a penalty equal to 50 percent of the gain the supplier  
4 received from any increase in the selling price or imprisonment of not more than 6  
5 months, or both.

6 (5) In addition to any other audits the department conducts to administer and  
7 enforce this subchapter, the department may audit any supplier who is subject to the  
8 assessment imposed under this subchapter to determine whether the supplier has  
9 taken any action to increase or influence the selling price of motor vehicle fuel in  
10 order to recover the amount of the assessment. Annually, the department shall  
11 submit a report to the governor and the legislature, as provided under s. 13.172 (2),  
12 that contains information on all audits conducted under this subsection in the  
13 previous year.

14 (6) (a) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and  
15 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to  
16 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.  
17 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,  
18 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under  
19 ch. 71 apply to the assessment under this subchapter.

20 (b) Section 78.01 (2), (2m), (2p), (2r) and (2s), *(a) and (b) and* as it applies to the tax imposed  
21 under s. 78.01 (1), *(a) and (b)* applies to the assessment imposed under this subchapter.

22 (7) The department shall deposit all revenue collected under this subchapter  
23 into the transportation fund.

24 SECTION 9141. Nonstatutory provisions; Revenue.

1 (1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of  
2 revenue may promulgate emergency rules under section 227.24 of the statutes  
3 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.  
4 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department  
5 of revenue is not required to provide evidence that promulgating a rule under this  
6 subsection as an emergency rule is necessary for the preservation of the public peace,  
7 health, safety, or welfare and is not required to provide a finding of emergency for a  
8 rule promulgated under this subsection.

9 **SECTION 9341. Initial applicability; Revenue.**

10 (1) OIL COMPANY ASSESSMENT. The treatment of section 25.40 (1) (bd), subchapter  
11 XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the sales of  
12 motor vehicle fuel on the first day of the <sup>1st</sup> calendar quarter beginning after the  
13 effective date of this subsection. *2nd*  
*Lud*

14 (END)

**2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1530/6ins  
JK:jld&wj.rs

**Insert 3 - 8**

1           (2) Any person, including a terminal operator, who is not a licensee under s.  
2           78.09 and who either used any motor vehicle fuel in this state or ~~who~~<sup>who</sup> has possession  
3           of any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for  
4           which the assessment under this subchapter has not been paid or for which no  
5           supplier has incurred liability for paying the assessment, shall file a report, in the  
6           manner described by the department, and pay the assessment based on the purchase  
7           price of the motor vehicle fuel.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

1530/60h  
VK:WLj:

para ①

① This draft incorporates the changes suggested by

DOR ①

VK

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1530/6dn  
JK:jld&wj:rs

January 31, 2007

Lara:

This draft incorporates the changes suggested by DOR.

Joseph T. Kreye  
Legislative Attorney  
Phone: (608) 266-2263  
E-mail: [joseph.kreye@legis.wisconsin.gov](mailto:joseph.kreye@legis.wisconsin.gov)



**Kreye, Joseph**

---

**From:** Kornely, Sara - DOA  
**Sent:** Thursday, February 01, 2007 2:07 PM  
**To:** Kreye, Joseph  
**Subject:** FW: LRB Draft: 07-1530/6 Oil company assessment  
**Attachments:** 07-1530/6; 07-1530/6dn

Hi Joe – I have sent some info up the chain and expect that we might get some more changes on the penalty section per our discussion this morning, but I had a couple other points that I just wanted to send to you now:

- The lines 10-12 of the imposition language still appears to me to be an anti-pass through provision. Does this need to be there, or can we take it out given that we have a separate paragraph on anti-pass through?
- On line 18 of p. 4, do we need to say something like "received from any increase in the selling price *implemented to recover the assessment...*"? I'm concerned that right now we capture any increase in price, not just one found by DOR to be in violation of the section.

Any thoughts would be appreciated. Thanks! I'll keep you posted on what comes out of the Governor's office.

Sara Kornely  
Dept. of Administration  
608-266-1039

---

**From:** Schlueter, Ron [mailto:Ron.Schlueter@legis.wisconsin.gov]  
**Sent:** Wednesday, January 31, 2007 10:37 AM  
**To:** Kornely, Sara - DOA  
**Cc:** Grinde, Kirsten - DOA; Hanaman, Cathlene - LEGIS; Palchik, Laurie A - DOA  
**Subject:** LRB Draft: 07-1530/6 Oil company assessment

*Following is the PDF version of draft 07-1530/6.*

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

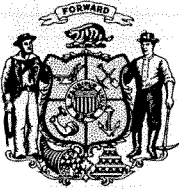
oil company

low —————

2.5

50% of gain → 100%

+ changes from before



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1530/6

JK:jld&wj:rs

7  
↑ stays  
RM mtr

DOA:.....Kornely, BB0352 - Oil company assessment

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 2-2-07

DONOTON

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

2.5

This bill imposes an assessment on a motor vehicle fuel supplier at the rate of 2 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The amount of the assessment may not be added to the selling price of any subsequent sale or distribution of the motor vehicle fuel and the supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

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1 25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

2 SECTION 2. Chapter 77 (title) of the statutes is amended to read:

3 **CHAPTER 77**

4 **TAXATION OF FOREST CROPLANDS;**

5 **REAL ESTATE TRANSFER FEES;**

6 **SALES AND USE TAXES; COUNTY**

7 **AND SPECIAL DISTRICT SALES**

8 **AND USE TAXES; MANAGED FOREST**

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11 **BEVERAGE TAX; LOCAL RENTAL**

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23 (1) "Biodiesel fuel" means biodiesel fuel, as defined in s. 168.14 (2m) (a), that  
24 is not blended with any petroleum product.

25 (2) "Department" means the department of revenue.

1 (3) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

2 (4) "Related party" means a person whose relationship with the supplier is  
3 described under section 267 (b) of the Internal Revenue Code.

4 (5) "Supplier" has the meaning given in s. 78.005 (14).

5 (6) "Terminal operator" has the meaning given in s. 78.005 (16). 2.5

6 **77.9981 Imposition.** (1) For the privilege of doing business in this state, there  
7 is imposed an assessment on each supplier at the rate of 2 percent of the supplier's  
8 gross receipts in each calendar quarter that are derived from the first sale in this  
9 state of motor vehicle fuel received by the supplier for sale in this state, for sale for  
10 export to this state, or for export to this state. The amount of the assessment shall  
11 not be added to the selling price of any subsequent sale or distribution of the motor  
12 vehicle fuel.

13 (2) Any person, including a terminal operator, who is not a licensee under s.  
14 78.09 and who either used any motor vehicle fuel in this state or has possession of  
15 any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for  
16 which the assessment under this subchapter has not been paid or for which no  
17 supplier has incurred liability for paying the assessment, shall file a report, in the  
18 manner described by the department, and pay the assessment based on the purchase  
19 price of the motor vehicle fuel.

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21 assessment under this subchapter and may take any action, conduct any proceeding,  
22 and impose interest and penalties.

23 (2) The assessments imposed under this subchapter for each calendar quarter  
24 are due and payable on the last day of the month next succeeding the calendar

1 quarter for which the assessments are imposed, as provided by the department by  
2 rule.

3 (3) For purposes of determining the amount of the assessment imposed under  
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6 ethanol is not included in the supplier's gross receipts. For purposes of determining  
7 the amount of the assessment imposed under this subchapter, with regard to a  
8 transfer of motor vehicle fuel from a supplier to a related party, the point of first sale  
9 in this state is the date of such transfer, and the gross receipts are calculated on a  
10 monthly basis using an index determined by rule by the department. For purposes  
11 of this subchapter, there is only one point of first sale in this state with regard to the  
12 sale of the same motor vehicle fuel.

13 (4) No supplier who is subject to the assessment imposed under this subchapter  
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15 in order to recover the amount of the assessment. A supplier who takes any action  
16 to increase or influence the selling price of motor vehicle fuel to recover the amount  
17 of the assessment is subject to a penalty equal to ~~50 percent~~ <sup>the amount</sup> of the gain the supplier  
18 received from any increase in the selling price or imprisonment of not more than 6  
19 months, or both. *that is implemented in order to recover the assessment amount*

20 (5) At the secretary of revenue's request, the attorney general may represent  
21 this state, or assist a district attorney, in prosecuting any case arising under this  
22 subchapter.

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10 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under  
11 ch. 71 apply to the assessment under this subchapter.

12 (b) Section 78.01 (2) (a) and (b), and (2m) (a) and (b), as it applies to the tax  
13 imposed under s. 78.01 (1), applies to the assessment imposed under this subchapter.

14 (8) The department shall deposit all revenue collected under this subchapter  
15 into the transportation fund.

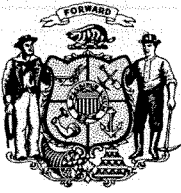
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25 **SECTION 9341. Initial applicability; Revenue.**







State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1530/7  
JK:jld&wj:jf

RM no AR

DOA:.....Kornely, BB0352 - Oil company assessment

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

in 2-7-07

don't gen

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*Analysis by the Legislative Reference Bureau*

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17 price of the motor vehicle fuel.

18           **77.9982 Administration.** (1) The department shall administer the  
19 assessment under this subchapter and may take any action, conduct any proceeding,  
20 and impose interest and penalties.

21           (2) The assessments imposed under this subchapter for each calendar quarter  
22 are due and payable on the last day of the month next succeeding the calendar  
23 quarter for which the assessments are imposed, as provided by the department by  
24 rule.

1           (3) For purposes of determining the amount of the assessment imposed under  
2 this subchapter, income derived from the first sale in this state of biodiesel fuel   
3 ✓ or of ethanol blended with gasoline to create gasoline consisting of at least 85 percent  
4 ethanol is not included in the supplier's gross receipts. For purposes of determining  
5 the amount of the assessment imposed under this subchapter, with regard to a  
6 transfer of motor vehicle fuel from a supplier to a related party, the point of first sale  
7 in this state is the date of such transfer, and the gross receipts are calculated on a  
8 monthly basis using an index determined by rule by the department. For purposes  
9 of this subchapter, there is only one point of first sale in this state with regard to the  
10 sale of the same motor vehicle fuel.

11           (4) No supplier who is subject to the assessment imposed under this subchapter  
12 shall take any action to increase or influence the selling price of motor vehicle fuel  
13 in order to recover the amount of the assessment. A supplier who takes any action  
14 to increase or influence the selling price of motor vehicle fuel to recover the amount  
15 of the assessment is subject to a penalty equal to the amount of the gain the supplier  
16 received from any increase in the selling price that is implemented in order to recover  
17 the assessment amount or imprisonment of not more than 6 months, or both.

18           (5) At the secretary of revenue's request, the attorney general may represent  
19 this state, or assist a district attorney, in prosecuting any case arising under this  
20 subchapter.

21           (6) In addition to any other audits the department conducts to administer and  
22 enforce this subchapter, the department may audit any supplier who is subject to the  
23 assessment imposed under this subchapter to determine whether the supplier has  
24 taken any action to increase or influence the selling price of motor vehicle fuel in  
25 order to recover the amount of the assessment. Annually, the department shall

1 submit a report to the governor and the legislature, as provided under s. 13.172 (2),  
2 that contains information on all audits conducted under this subsection in the  
3 previous year.

4 **(7)** (a) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and  
5 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to  
6 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.  
7 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,  
8 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under  
9 ch. 71 apply to the assessment under this subchapter.

10 (b) Section 78.01 (2) (a) and (b), and (2m) (a) and (b), as it applies to the tax  
11 imposed under s. 78.01 (1), applies to the assessment imposed under this subchapter.

12 **(8)** The department shall deposit all revenue collected under this subchapter  
13 into the transportation fund.

14 **SECTION 9141. Nonstatutory provisions; Revenue.**

15 (1) EMERGENCY RULES CONCERNING OIL COMPANY ASSESSMENT. The department of  
16 revenue may promulgate emergency rules under section 227.24 of the statutes  
17 implementing subchapter XIV of chapter 77 of the statutes, as created by this act.  
18 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department  
19 of revenue is not required to provide evidence that promulgating a rule under this  
20 subsection as an emergency rule is necessary for the preservation of the public peace,  
21 health, safety, or welfare and is not required to provide a finding of emergency for a  
22 rule promulgated under this subsection.

23 **SECTION 9341. Initial applicability; Revenue.**

24 (1) OIL COMPANY ASSESSMENT. The treatment of section 25.40 (1) (bd), subchapter  
25 XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the sales of

1 motor vehicle fuel on the first day of the 2nd calendar quarter beginning after the  
2 effective date of this subsection.

3 (END)



State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-1530/8  
JK:jld&wj:jf

DOA:.....Kornely, BB0352 - Oil company assessment

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**TAXATION**

**OTHER TAXATION**

This bill imposes an assessment on a motor vehicle fuel supplier at the rate of 2.5 percent of the supplier's gross receipts from the first sale of motor vehicle fuel in this state. The supplier may take no action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the assessment. For the purpose of determining the amount of the assessment, income derived from the first sale in this state of biodiesel fuel or ethanol blended with gasoline to create gasoline consisting of at least 85 percent ethanol is not included in the supplier's gross receipts. The revenue collected from the assessment is deposited into the transportation fund.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

2 SECTION 1. 25.40 (1) (bd) of the statutes is created to read:

1 25.40 (1) (bd) Oil company assessments under subch. XIV of ch. 77.

2 SECTION 2. Chapter 77 (title) of the statutes is amended to read:

3 **CHAPTER 77**

4 **TAXATION OF FOREST CROPLANDS;**

5 **REAL ESTATE TRANSFER FEES;**

6 **SALES AND USE TAXES; COUNTY**

7 **AND SPECIAL DISTRICT SALES**

8 **AND USE TAXES; MANAGED FOREST**

9 **LAND; TEMPORARY RECYCLING**

10 **SURCHARGE; LOCAL FOOD AND**

11 **BEVERAGE TAX; LOCAL RENTAL**

12 **CAR TAX; PREMIER RESORT AREA**

13 **TAXES; STATE RENTAL VEHICLE FEE;**

14 **DRY CLEANING FEES; REGIONAL**

15 **TRANSIT AUTHORITY FEE;**

16 **OIL COMPANY ASSESSMENT**

17 SECTION 3. Subchapter XIV of chapter 77 [precedes 77.998] of the statutes is  
18 created to read:

19 **CHAPTER 77**

20 **SUBCHAPTER XIV**

21 **OIL COMPANY ASSESSMENT**

22 **77.998 Definitions.** In this subchapter:

23 (1) "Biodiesel fuel" means biodiesel fuel, as defined in s. 168.14 (2m) (a), that  
24 is not blended with any petroleum product.

25 (2) "Department" means the department of revenue.



1           (3) "Motor vehicle fuel" has the meaning given in s. 78.005 (13).

2           (4) "Related party" means a person whose relationship with the supplier is  
3 described under section 267 (b) of the Internal Revenue Code.

4           (5) "Supplier" has the meaning given in s. 78.005 (14).

5           (6) "Terminal operator" has the meaning given in s. 78.005 (16).

6           **77.9981 Imposition.** (1) For the privilege of doing business in this state, there  
7 is imposed an assessment on each supplier at the rate of 2.5 percent of the supplier's  
8 gross receipts in each calendar quarter that are derived from the first sale in this  
9 state of motor vehicle fuel received by the supplier for sale in this state, for sale for  
10 export to this state, or for export to this state.

11           (2) Any person, including a terminal operator, who is not a licensee under s.  
12 78.09 and who either used any motor vehicle fuel in this state or has possession of  
13 any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for  
14 which the assessment under this subchapter has not been paid or for which no  
15 supplier has incurred liability for paying the assessment, shall file a report, in the  
16 manner described by the department, and pay the assessment based on the purchase  
17 price of the motor vehicle fuel.

18           **77.9982 Administration.** (1) The department shall administer the  
19 assessment under this subchapter and may take any action, conduct any proceeding,  
20 and impose interest and penalties.

21           (2) The assessments imposed under this subchapter for each calendar quarter  
22 are due and payable on the last day of the month next succeeding the calendar  
23 quarter for which the assessments are imposed, as provided by the department by  
24 rule.

1           **(3)** For purposes of determining the amount of the assessment imposed under  
2 this subchapter, income derived from the first sale in this state of biodiesel fuel or  
3 of ethanol blended with gasoline to create gasoline consisting of at least 85 percent  
4 ethanol is not included in the supplier's gross receipts. For purposes of determining  
5 the amount of the assessment imposed under this subchapter, with regard to a  
6 transfer of motor vehicle fuel from a supplier to a related party, the point of first sale  
7 in this state is the date of such transfer, and the gross receipts are calculated on a  
8 monthly basis using an index determined by rule by the department. For purposes  
9 of this subchapter, there is only one point of first sale in this state with regard to the  
10 sale of the same motor vehicle fuel.

11           **(4)** No supplier who is subject to the assessment imposed under this subchapter  
12 shall take any action to increase or influence the selling price of motor vehicle fuel  
13 in order to recover the amount of the assessment. A supplier who takes any action  
14 to increase or influence the selling price of motor vehicle fuel to recover the amount  
15 of the assessment is subject to a penalty equal to the amount of the gain the supplier  
16 received from any increase in the selling price that is implemented in order to recover  
17 the assessment amount or imprisonment of not more than 6 months, or both.

18           **(5)** At the secretary of revenue's request, the attorney general may represent  
19 this state, or assist a district attorney, in prosecuting any case arising under this  
20 subchapter.

21           **(6)** In addition to any other audits the department conducts to administer and  
22 enforce this subchapter, the department may audit any supplier who is subject to the  
23 assessment imposed under this subchapter to determine whether the supplier has  
24 taken any action to increase or influence the selling price of motor vehicle fuel in  
25 order to recover the amount of the assessment. Annually, the department shall

1 submit a report to the governor and the legislature, as provided under s. 13.172 (2),  
2 that contains information on all audits conducted under this subsection in the  
3 previous year.

4 (7) (a) Sections 71.74 (1) to (3), (5), (7), and (9) to (15), 71.75 (1), (2), (6), (7), and  
5 (9), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to  
6 (6), (8) to (12), (14), (17), and (18), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2.  
7 and (b) 1., 2., and 6., (2) (a) 1. to 3. and (b) 1. to 3., and (3), 71.87, 71.88, 71.89, 71.90,  
8 71.91 (1) (a), (2), (3), and (4) to (7), 71.92, and 71.93 as they apply to the taxes under  
9 ch. 71 apply to the assessment under this subchapter.

10 (b) Section 78.01 (2) (a) and (b), and (2m) (a) and (b), as it applies to the tax  
11 imposed under s. 78.01 (1), applies to the assessment imposed under this subchapter.

12 (8) The department shall deposit all revenue collected under this subchapter  
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18 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department  
19 of revenue is not required to provide evidence that promulgating a rule under this  
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21 health, safety, or welfare and is not required to provide a finding of emergency for a  
22 rule promulgated under this subsection.

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25 XIV of chapter 77, and chapter 77 (title) of the statutes first applies to the sales of

1 motor vehicle fuel on the first day of the 2nd calendar quarter beginning after the  
2 effective date of this subsection.

3 (END)