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May 19, 2009 Joint Committee on Finance Paper #752

Oil Company Profits Tax (Transportation -- DOT Finance)

[LFB 2009-11 Budget Summary: Page 599, #4]

CURRENT LAW

No provision.

GOVERNOR

Establish an oil company profits tax that would initially apply to the amounts reported on the first remittance of the taxes after October 1, 2009 (this would generally occur on October 15 for September sales). Deposit the revenues from the tax to the transportation fund and estimate increased revenues to the fund at $100,324,900 in 2009-10 and $171,490,300 in 2010-11.

Impose, for the privilege of doing business in this state, a tax on each motor vehicle fuel supplier's annual gross receipts (Although titled an oil company profits tax, the tax would actually be imposed on gross receipts, not profits, and the amount would be unrelated to a taxpayer's profitability). Define annual gross receipts to mean the gross receipts that correspond to the state's fiscal year. Establish the following tiered structure of tax rates for the oil company profits tax, which would increase as annual gross receipts increase.

Total Gross Receipts	Tax Rate
$0 to $15,000,000	0.0%
$15,000,001 to $75,000,000	0.5
$75,000,001 to $120,000,000	1.5
Over $120,000,000	3.0

The tax would apply to the 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, for sale for export to this state, or for export to this state. Specify the following for purposes of determining the amount of the oil company profits tax to be imposed: (a) with regard to a transfer of motor vehicle fuel from a supplier to a related party, the point of first sale in this state is the date of such transfer, and the annual gross receipts are calculated on a monthly basis using an index to be determined by rule by the Department of Revenue (DOR); and (b) there is only one point of first sale in this state with regard to the sale of the same motor vehicle fuel.

Specify that the following would not be included in gross receipts or be subject to the tax: (a) state or federal excise taxes, or petroleum inspection fees, collected from the purchaser; (b) consideration derived from sales of motor vehicle fuel if the fuel is biodiesel fuel or ethanol blended with gasoline to create fuel consisting of at least 85% ethanol (E85); and (c) income derived from sales for all current gasoline and diesel fuel uses that are exempt from the state motor vehicle fuel excise tax, some of which include fuel sold for use in mass transit, trains, and aircraft, for most nonhighway uses, and for use as a heating oil.

Prohibit any person who is subject to the tax from increasing the selling price of motor vehicle fuel in order to recover the amount of the tax. This is often referred to as an "anti-pass-through" provision. Specify that the person primarily responsible for increasing the selling price of motor vehicle fuel to recover the amount of the tax would be subject to a penalty equal to the amount of the tax passed through to the purchaser. This person would be defined as: (a) the officer, employee, or other responsible person of a corporation, or other form of business association, who has the duty to approve, confirm, ratify, or validate the selling price of motor vehicle fuel; or (b) the partner, member, employee, or other responsible person of a partnership, limited liability company, or sole proprietorship, who has the duty to approve, confirm, ratify, or validate the selling price of motor vehicle fuel.

Specify that any person, including a terminal operator, who is not licensed by the state as a motor vehicle fuel supplier or exporter, and who either used any motor vehicle fuel in this state or has possession of any motor vehicle fuel, other than that contained in a motor vehicle's fuel tank, for which the tax has not been paid or for which no supplier has incurred liability for paying the tax, would be required to file a report, in the manner described by DOR, and pay the tax based on the purchase price of the fuel. These provisions would capture smaller entities that handle fuel, or any person who handles fuel, on which the tax has yet to be paid.

DISCUSSION POINTS

Background

1. A simplified view of the fuel market structure in the United States is that product begins at the crude oil stage, is refined into an end use, passes through interstate pipelines to local terminals, and is then trucked to the local retail station. The refining, pipeline, terminal, and retail station assets of the fuel supply chain may be owned by one company, but generally involve several

different companies. During the fuel delivery process, the majority of fuel product can change hands a number of times from the refinery to the retail station. Other fuel can go from the refinery to the retail station in one transaction. Each buyer and seller of the fuel has costs and profit expectations associated with each transaction, which generally results in the fuel price increasing with each transaction.

2. At any stage of the fuel delivery process, fuel is sold under a variety of contract arrangements or in single sale, or "spot", transactions. Contracted transactions generally involve the ongoing delivery of fuel product between two parties under contracts that specify the product price, delivery and other charges, and volume guarantees. Spot market transactions refer to the one-time sale of a quantity of fuel at a convenient transfer point, such as the refiner, port, or pipeline junction, or terminal. However, that one-time quantity of fuel can go through a succession of spot transactions if the fuel is resold by traders, dealers, jobbers (those who purchase fuel at the terminal and transfer the product to a retail outlet), and/or independent marketers. While there may be some lag, it is generally believed that retail prices will over time reflect changes in the spot market price of fuel (also referred to as the "rack price" when sold at the terminal). The rack price is the point of sale at which price data is most often tracked.

3. Wisconsin has over 4,100 retail gasoline outlets, which are made up of three predominant types: (a) refiner-owned and operated stations; (b) branded, independent retailer outlets, which lease the retail outlet or brand name from the brand-owned company, or are in some part independently owned and operated; and (c) unbranded, independent outlets, which are owned and operated by an independent business owner with no connection to an oil refiner. Some terminal companies and jobbers also own, operate, or lease branded and unbranded retail outlets. Branded, independent outlets make up the largest share of the state's stations, with unbranded, independent retail outlet owners making up the next largest share of stations, and major oil company or refiner-owned and operated outlets making up only a small share of stations.

4. Refiner-owned stations receive fuel directly from that company's terminal assets, which stems from that company's refiners. Similarly, branded, independent stations are typically under contract for supply directly from the brand company's terminal assets, which often stems from the brand company's refining assets. In exchange for this access to supply, and for other services, including marketing, these stations pay a specified premium in the price for the fuel purchased from the brand company. During times of tight fuel supply, these retailers are given some priority in obtaining fuel from the brand company. However, contracts between the brand company and their retailers typically only guarantee a specified percentage of the retailer's volume, which during tight supply periods may require these branded stations to purchase the remainder of their fuel supply needs on the spot market. The unbranded, independent stations generally purchase unbranded fuel on the spot market through jobbers, or at the terminal, but some larger independents also contract for fuel with one or more refiners.

Anti-Pass-Through Provision

5. The Governor's oil company profits tax is very similar to the oil company

assessment he proposed as part of the 2007-09 biennial budget. Like his earlier proposal, the proposed oil company profits tax contains an "anti-pass-through" provision, which prohibits fuel suppliers from taking any action to increase or influence the selling price of motor vehicle fuel in order to recover the amount of the tax. In his Budget in Brief, the Governor indicated that the oil company profits tax is aimed at assessing oil companies for a portion of their "excess profits". The administration contends that, under the anti-pass-through provision, consumers or end users of the fuel would not see an increase in the cost of fuel associated with the tax.

6. Under the proposed tax, any person primarily responsible for increasing the selling price of motor vehicle fuel to recover the amount of the tax would be subject to a penalty equal to the amount of the tax passed through to the purchaser. This provision could result in a lighter penalty than was included under the Governor's 2007-09 biennial budget proposal. Under that proposal, the forfeiture amount would have been the same, but the penalty could have also included imprisonment of not more than six months.

7. The administration indicates that the oil company profits tax proposal would allow the state to recoup some of the oil industry profits generated in Wisconsin. They contend that by depositing the revenues from the oil company profits tax in the transportation fund, the state would be requiring oil companies to pay their fair share of the cost of building and maintaining the state roads on which a portion of those profits were generated.

8. In recent years, major oil companies have been experiencing profits that have outpaced other industries. In 2008, five major oil companies had combined annual profits totaling $132 billion. Exxon Mobil had record annual profits of $45 billion in 2008. However, early estimates indicate that major oil company profits could be considerably lower in 2009.

9. While annual oil company profits have been high in recent years, much debate exists as to whether federal or state governments should intervene in the fuel market. Some federal and state policymakers have contended that oil refiners, due to their market power and crude-to-refined product margins, have the ability to implement anti-competitive marketing and pricing strategies, which help generate these record profits. In addition, vertical integration of the oil industry (ownership of retail gasoline stations by the petroleum industry itself) and direct refiner-to-retailer market sales have also been a concern. State and federal legislation to limit the market power of oil companies has been introduced and, in some instances, enacted. However, the proposed oil company profits tax would impact more than just the refiner-owned fuel supply companies that purportedly have this market power and have accumulated record profits in recent years.

10. Some concern exists as to whether the state has the legal authority to regulate what costs a private company can pass on to its customers. The administration cites a 1988 U.S. Supreme Court decision (*Puerto Rico Department of Consumer Affairs v. Isla Petroleum Corp.*), as upholding states' authority to limit oil companies from passing on a tax to their customers. In the *Puerto Rico* case, the Supreme Court reviewed a lower court decision relating to a system of price controls, including an excise tax on petroleum companies, established by the territory of Puerto Rico. The Puerto Rico statute also prohibited the oil refiners from passing the cost of the tax

through to retailers. The oil companies challenged the Puerto Rico regulation on the grounds that Puerto Rico's authority to regulate the price that oil companies can charge their consumers was preempted by the U.S. Congress when it allowed federal fuel price controls, enacted in 1973, under the Emergency Petroleum Allocation Act, to expire. The oil companies contended that when Congress left the arena of federal price regulation, it intended for the petroleum market to be free of any price controls by any government. Therefore, they argued that under the Supremacy Clause of the U.S. Constitution (Article VI), the authority to regulate fuel prices would reside with the federal government and not the government of Puerto Rico.

11. The U.S. Supreme Court disagreed with the oil companies' contention. In its *Puerto Rico* decision, the court stated that "….there can be no federal preemption of state law in vacuum without any constitutional text or federal statute to assert it". They found that Puerto Rico was not preempted by the Supremacy Clause from regulating fuel prices. However, it should be noted that the Supreme Court's opinion did not specifically address the anti-pass-through provision of the Puerto Rico statute. Rather, the opinion discussed the authority of states to regulate fuel prices.

12. It may be more likely that Wisconsin motor vehicle fuel suppliers would litigate the proposed anti-pass-through provision on the grounds that it violates the Commerce Clause of the U.S. Constitution (Article I, Section VIII). A 1983 Supreme Court of New York, Appellate Division, decision (*Shell Oil Company v. New York State Tax Commission*) held that a New York statute that prohibited oil companies from passing on a gross receipts tax to consumers violated the Commerce Clause. In its ruling, the court concluded that "it appears clear to us that the practical effect of prohibition (anti-pass-through) is to shift the direct burden of the tax from the companies' New York customers to their out-of-state customers". The New York Court noted that their conclusion is placed squarely under the holding of a U.S. Supreme Court decision (*Maryland v. Louisiana, 1981*), in which the Supreme Court ruled that the practical application of a similar Louisiana law would have the effect of insulating in-state consumers from the burden of a tax while passing the tax on to the out-of-state customers of the same company.

13. As part of the 2007-09 budget deliberations on the then-proposed oil company assessment, Wisconsin Legislative Council staff reviewed the legal issues surrounding the anti-pass through provision associated with that proposal. Similarly, Legislative Council staff have reviewed the proposed anti-pass-through provision of the oil company profits tax. Legislative Council staff indicate that because the proposed anti-pass-through provision is similar to the provision struck down in the *Shell Oil* case, it would appear that the provision in the bill raises the same legal issue. That is, whether the provision would violate the Commerce Clause because its practical effect would be to pass on the cost of the tax to the out-of-state customers of the Wisconsin suppliers subject to the tax. Council staff indicate that because the *Shell Oil* decision is a decision of a New York court, it is not a precedent for purposes of review of the constitutionality of the proposed anti-pass-through provision under the bill. However, Council staff note that the New York court's rationale may be indicative of how another court would assess a Commerce Clause challenge to the constitutionality of the proposed anti-pass-through provision.

14. Council staff indicated that, read literally, the proposed anti-pass-through provision

would prohibit the pass through of the tax in the sales price of products sold anywhere, not just in Wisconsin. Therefore, it could be argued that the effect of the proposed anti-pass-through provision would not be to shift the burden of the tax to the out-of-state customers of state fuel suppliers. However, Council staff also noted that, given the difficulty of determining whether a supplier has passed on the tax to customers inside or outside of Wisconsin, a court may not see a significant difference between the anti-pass-through provision under the bill and the provision invalidated in the *Shell Oil* case.

15. In 2007, the Governor of Pennsylvania proposed an oil company profits tax that would have applied an anti-pass-through provision to the tax. The provision was not enacted, but oil industry officials indicated at the time that they would likely litigate the Pennsylvania provision, if enacted. Similarly, in Wisconsin, it is likely the oil industry will litigate swiftly in the hope that successful litigation would put an end to any efforts by other states to enact similar provisions. The likelihood of litigation also raises the question of what would happen to the expected revenues from the tax if the oil companies are successful in litigation and the anti-pass-through provision is deemed unconstitutional. A court could rule that the state could still collect the tax without the anti-pass-through provision, which would have no impact on the projected revenues. Conversely, a court may be reluctant to defy the Legislature and place the burden of the tax onto the very consumers that the provision was designed to protect. Due to this uncertainty, the Committee could consider specifying that if the anti-pass-through provision is deemed unconstitutional, the oil company profits tax would remain in place (Alternative 3a). Such a statement may also help protect the state from an injunction preventing the state from collecting and expending the tax proceeds until the validity of the anti-pass-through provision is resolved. Alternatively, the Committee could decide to eliminate the anti-pass-through provision in order to remove this potential constitutional issue (Alternative 3b).

16. Bringing action against a motor vehicle fuel supplier that manipulates the price of its products in order to recoup the cost of the oil company profits tax could be difficult. Oil companies that supply motor vehicle fuel to Wisconsin also process many other petroleum and energy products in which they could pass on the cost of the tax to consumers, including products used for asphalt, plastics, heating and aviation fuel, and natural gas. Oil companies also provide advertising, marketing, equipment, and services to their branded franchise owners, and could pass the cost of the tax on through these products. Oil companies also contract for the purchase of ethanol from ethanol producers in the state to blend gasohol and could pass on a portion of the cost of the tax in those contracts.

17. Monitoring fuel price changes to determine compliance with the anti-pass-through provision could also prove impractical. As mentioned earlier, a fuel product may be bought and sold several times before it reaches consumers and tracking the costs of each buyer and seller could be difficult. DOR would likely audit the sale of fuel at the terminal level, or spot market, where fuel prices can change very quickly, which also changes the value of fuel owned and held by a company at the time of those price changes. Therefore, any subsequent sale of that fuel would likely reflect the spot market price at the date and time of the sale, rather than the price at the time the fuel was purchased. In addition, some sellers may price fuel based on the anticipated replacement cost of the

fuel, rather than the sunk cost of fuel they have purchased. This dynamic pricing environment could make it difficult to determine whether the price and volume of the fuel sold includes the value of the oil company profits tax.

18. The bill would not provide DOR with additional audit staff to audit the compliance of oil companies relative to the proposed tax, including whether a company is passing through the tax. During the Committee's agency briefings on the Governor's 2009-11 budget recommendations, the DOR Secretary indicated that existing auditor staff could be reallocated in order to conduct audits of the proposed oil company profits tax. On the similar 2007-09 oil company assessment proposal, the Secretary indicated that he was confident that the Department could develop an audit model that would ensure compliance with the anti-pass-through provision.

19. During the agency briefings before the Committee, the Department of Administration indicated that DOR would be collecting the oil company profits tax from the same companies that pay the motor vehicle fuel tax. While there are over 150 registered suppliers that would be subject to the oil company profits tax, they noted that over 90% of the revenue from the tax would come from the largest 15 suppliers. Therefore, it could be feasible for audit staff to periodically select, review, and audit these major suppliers, as well as several smaller suppliers, to ensure compliance with the tax.

20. At 30.9 cents per gallon, the state currently has the second-highest excise tax rate on gasoline behind Washington state's 37.6 cents per gallon rate. However, including all state environmental taxes on gasoline and state sales taxes, the state's 32.9 cents per gallon rate, which includes a two cent per gallon petroleum inspection fee, ranks seventh among the states. Table 1 indicates where Wisconsin would rank in total state gasoline taxes paid by consumers if the oil company profits tax is not passed on and if it is eventually passed on. If it is not passed on, Wisconsin would continue to rank seventh among the states in total state gasoline taxes paid by consumers. If the proposed tax would be passed on to consumers, Wisconsin would rank first in total state gasoline taxes. However, several states allow local sales or excise taxes on motor vehicle fuel. If these local taxes are included, Wisconsin's rank would drop to fifth among the states, if the proposed oil profits tax would be passed on to consumers.

TABLE 1

Rank of States With Highest Total Gasoline Tax Rates*

Assuming No Pass Through			Assuming Pass Through		
Rank	State	Gasoline Rate	Rank	State	Gasoline Rate
1	Washington	37.6¢	**1**	**Wisconsin**	**38.7¢**
2	California	37.2	2	Washington	37.6
3	Indiana	33.6	3	California	37.2
4	New York	33.4	4	Indiana	33.6
5	Michigan	33.4	5	New York	33.4
6	Illinois	33.1	6	Michigan	33.4
7	**Wisconsin**	**32.9**	7	Illinois	33.1
8	Pennsylvania	32.2	8	Pennsylvania	32.2
9	West Virginia	32.2	9	West Virginia	32.2
10	Rhode Island	31.1	10	Rhode Island	31.1

* Rates based on information supplied by DOT as of January, 2009. Sales taxes and other price-based taxes are reflected on a per gallon equivalent rate, based on a price including state and federal taxes of $2.45 per gallon.

Impact of the Anti-Pass-Through Provision on Wisconsin's Fuel Market

21. Some evidence suggests that regulating the prices that can be charged for fuel products could impact the supply of those products to the regulated area. The federal government and other states have attempted to intervene in the gasoline and diesel fuel market with some sort of price controls. In the case of the federal price controls of the 1970s, a report by the Federal Trade Commission's Bureau of Economics concluded that the price controls led to the adoption of higher-cost production methods and sporadic shortages that were manifested in gasoline lines at retail outlets. More recently, the State of Hawaii passed legislation that put in place price controls that set weekly caps on wholesale gas prices based on an average of prices in other areas of the country, with allowances made for transportation costs to Hawaii. The price controls were implemented in September, 2005, a period that coincided with the Hurricane Katrina natural disaster, which tightened fuel supply throughout the United States. By May, 2006, the Legislature suspended the price control mechanism over concerns that the controls inhibited fuel supply to Hawaii and actually increased prices.

22. At a pump price of $2.45 cents per gallon, the 3.0%, top rate associated with the proposed tax would be equivalent to approximately 5.8 cents per gallon for gasoline and 5.6 cents per gallon for diesel fuel. A company that sells 500 million gallons of gasoline in the state would generate $968.5 million in gross receipts. That company would have to absorb $26.4 million annually in oil company profits taxes on those receipts because it would not be able to reflect these costs in the fuel product price. Such an intervention in the pricing of fuel could impact that company's decisions on where to deliver fuel supply.

23. Periodically, either nationally or regionally, or both, the fuel supply experiences interruptions. Seasonal issues, reformulated gasoline requirements, pipeline or other structural

issues, international events, or natural disasters like Hurricane Katrina in 2005, can all have a significant impact on fuel supply. During such tight fuel supply periods, the proposed anti-pass-though provision could put state fuel retailers at a disadvantage for fuel supply given its potential impact on profitability. It may be conceivable that, during periods of tight fuel supply, suppliers may choose to supply fuel to other states within the Midwest region rather than realize reduced profits in Wisconsin associated with having to absorb the cost of the oil company profits tax. Such a decision could further tighten the fuel supply for certain retail outlets in the state, which could exacerbate the temporary fuel price spikes that typically occur during a tight fuel supply event. It could also lead to more frequent tight fuel supply events.

24. Such events would also likely affect the various types of retailers in the state differently. Refiners could continue to supply their own retail outlets with fuel. As Wisconsin retail prices increase to reflect the increased spot market prices resulting from the tightened supply, and possibly the movement of supply to other states, depending on their profit margins, these refiner-owned outlets could substantially benefit from their continued supply in the short term. Branded, independent retailers would likely only receive the portion of the fuel that is guaranteed by their brand suppliers during a tight supply period. Their branded suppliers could choose to sell the non-guaranteed supply amount to retail outlets in other states, where the fuel would not be subject to the oil company profits tax, or on the spot market, where, in the short term, they may receive a higher price than the contract price established with their branded retailers in Wisconsin. If fuel is moved out of state during periods of short supply, unbranded, independent retailers, which are more typically found in the state's rural areas, would likely be impacted the most. These retailers would typically have no guaranteed supply, and thus would be bidding for a limited fuel supply against other in-state independent retailers, as well as against out-of-state retailers, who would have a price advantage because the fuel supplied to them would not be subject to the tax.

25. Some major suppliers are both terminal operators and distributors of gasoline and diesel fuel. Such suppliers often buy fuel under contract at a price that closely reflects the spot market price and sell that fuel at another spot market price. While such suppliers sell a significant amount of fuel, they have smaller price margins and do not generate the same level of profits as the large, refining fuel producers who also supply fuel to the state. Some of these suppliers, or wholesalers, are significant payers of the state's motor vehicle fuel tax and would be subject to the proposed oil company profits tax. However, they indicate that their average price margin on the fuel they supply would be less than the estimated five to six cent per gallon oil company profits tax under the bill. Therefore, they contend that if they have to absorb the cost of the oil company profits tax, they may be forced out of the fuel supply business in Wisconsin, which could further impact the state's fuel supply.

26. Under the bill, fuel suppliers who are currently subject to the motor vehicle fuel tax would also be subject to the oil company profits tax. In 2008, there were 76 licensed, unrestricted suppliers that remit motor vehicle fuel tax revenues to the state. There are 83 other restricted suppliers, or suppliers that deliver across state lines, who also remit state motor vehicle fuel taxes. As mentioned earlier, the Governor has indicated that the oil company profits tax is aimed at taxing oil companies for a portion of their "excess profits". However, although titled the oil company

profits tax, the tax would actually be imposed on gross receipts, not profits, and the amount owed would be unrelated to a taxpayer's profitability. The profitability of the state's 159 suppliers will likely vary widely, with some suppliers likely generating a smaller profit margin on the sale of a gallon of fuel compared to the large oil refiners.

Stability of the Oil Company Profits Tax as a Revenue Source

27. The oil company profits tax would be similar to a sales tax on motor vehicle fuel in that the tax would be based on the price of fuel, except that it would be paid as the fuel is supplied for sale in the state rather that at the fuel pump at retail. One primary concern related to a price-based revenue source is the stability of the revenue generated from the tax. This concern is exacerbated relative to gasoline and diesel fuel because the tax is only applied to two items, compared to a larger base of items for the state's general sales tax. Fuel prices can fluctuate significantly during a year. For example, according to the U.S. Energy Information Administration, the weekly retail price of regular, unleaded gasoline (non-reformulated) was $2.97 per gallon during the first week of February, 2008, rose to $4.05 per gallon in mid-July, 2008 (a 36% increase compared to February), and then steadily receded to $1.64 per gallon at the end of December, 2008 (a 45% decrease compared to February). Such price fluctuations could make projecting revenue from the oil company profits tax difficult and could result in revenues being much higher than expectedly during periods of unexpectedly high fuel prices and lower than expected during periods of low fuel prices. Since revenues from the proposed tax represent 7.7% of total, estimated transportation fund revenues during the biennium, a sustained 30% difference between actual and estimated prices would result in actual transportation fund revenues varying by 2.3% from estimated levels, a $78 million difference.

28. One alternative to the oil company profits tax would be to assess a cent per gallon fee based on the number of gallons sold. This would remove price fluctuations from the calculation of the tax, which would make the revenues generated from the tax more stable. Changes in annual consumption would be the only remaining factor that would affect revenue stability. Also, assessing the fee on a cent per gallon basis could have some administrative advantage for DOR and fuel suppliers, in that the fee could be reported and collected in a manner similar to the current motor vehicle fuel tax.

29. A cent per gallon oil company assessment option could be established using a tiered structure similar to the Governor's proposal and could also include the same anti-pass-through provisions. Table 2 indicates a possible tier structure of a cent per gallon oil company assessment alternative that would generate the same amount of revenue in the biennium that would be generated under the Governor's proposal. The tier structure and rates under this alternative would generate an estimated $115.3 million in 2009-10 and $144.6 million in 2011-12 (Alternative 2).

TABLE 2

Oil Company Assessment Proposal

Gallons Sold	Rate Per Gallon
0 to 8,000,000	0.0¢
8,000,001 to 35,000,000	1.5
35,000,001 to 60,000,000	3.5
Over 60,000,000	5.5

30. The Department of Transportation, which proposed a funding mechanism similar to that in AB 75 in its 2009-11 budget request, indicated it was needed, in part, because slow growth in consumption and the elimination of motor vehicle fuel tax indexing have combined to limit the natural growth in transportation fund revenues. This, along with increased program demands on the fund, led to the Department's request.

31. As an alternative to the oil company profits tax, the Committee could adopt a specified cent per gallon increase to the existing motor vehicle fuel tax rate. This would eliminate any legal concerns with the anti-pass-through provisions under the Governor's proposal. It would also eliminate any concerns as to whether or not the tax could continue to be collected by DOR in the event the anti-pass-through provision is found to be unconstitutional. Under this alternative, each one cent increase in the state's motor vehicle fuel tax rate would generate an estimated $59.3 million in the 2009-11 biennium (Alternative 4).

32. The bill would deposit the revenues from the oil company profits tax in the transportation fund and would increase estimated revenues to the fund by $100,324,900 in 2009-10 and $171,490,390 in 2010-11. Under LFB Paper #750, these revenue amounts were reestimated at $103,684,300 in 2009-10 and $156,403,300 in 2010-11. Oil company profits tax revenues are estimated to be higher for 2009-10 than the amounts originally included in the bill by $3.4 million. The higher revenues reflect an errata to the budget bill submitted by the Department of Administration on March 30, 2009, that clarifies that the oil company profits tax would first apply to gross receipts received on or after September 1, 2009. The original estimates reflected only nine months of revenues for 2009-10. Under the errata, 10 months of revenues would be generated in 2009-10. Absent this change, lower fuel consumption estimates for 2009-10 would result in a $2.6 million reduction in tax revenues for that year. Estimated revenues from the oil company profits tax would be lower in 2010-11 than the original estimates by $15.1 million. The reduction is due to lower projected fuel prices compared to the earlier estimates. The net result of these changes is that total projected revenues from the oil company profits tax are $11.7 million lower for the biennium. The reestimated revenues are based on projected fuel prices (at the pump) ranging from $2.22 to $2.34 per gallon in 2009-10 and $2.42 to $2.66 per gallon in 2010-11.

ALTERNATIVES

1. Approve the Governor's recommendation to impose an oil company profits tax on

each motor vehicle fuel supplier under a tiered structure of rates, ranging from 0% to 3%, depending on the supplier's annual gross receipts. Specify that the tax would apply to the 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, for sale for export to this state, or for export to this state. Clarify that the tax would first apply to gross receipts received on or after September 1, 2009 (this reflects the errata submitted by the Department of Administration).

Prohibit any person who is subject to the tax from increasing the selling price of motor vehicle fuel in order to recover the amount of the tax. Specify that any person primarily responsible for increasing the selling price of motor vehicle fuel to recover the amount of the tax would be subject to a penalty equal to the amount of the tax passed through to the purchaser.

The reestimated revenues associated with the proposal (included in LFB Paper #750) would be $103,684,300 in 2009-10 and $156,406,300 in 2010-11.

2. Delete the Governor's recommendation to create an oil company profits tax based on a supplier's gross receipts. Rather create an oil company assessment based on the amount of annual gallons supplied by each supplier in the state. Specify that the assessment would be collected in the same manner as the state's motor vehicle fuel tax, after accounting for the exempted gallons. All other provisions relating to the Governor's proposed oil company profits tax would apply to the oil company assessment, including the provision prohibiting suppliers from passing on the costs of the assessment in the price of the motor vehicle fuel in order to recover the amount of the assessment. Establish the following tiered rate structure for the assessment, which would increase as annual gallons supplied increase.

Gallons Sold	Rate Per Gallon
0 to 8,000,000	0.0¢
8,000,001 to 35,000,000	1.5
35,000,001 to 60,000,000	3.5
Over 60,000,000	5.5

Estimate revenues from the assessment at $115,300,000 in 2009-10 and $144,600,000 in 2011-12. This would generate $190,600 less in revenues in the biennium. On a fiscal year basis, compared to the reestimated revenues under the bill, revenues would be $11,615,700 higher in 2009-10 and $11,806,300 lower in 2010-11.

ALT 2	**Change to Bill** Revenue
SEG	- $190,600

3. In addition to Alternatives 1 or 2, do one of the following:

a. Specify that if the anti-pass-through provision of the oil company profits tax is found to be unconstitutional, the tax would continue to apply.

b. Delete the anti-pass-through provision and penalties associated with the oil company profits tax.

4. Delete provision. Instead, increase the motor vehicle fuel tax rate by one of the following amounts, effective August 1, 2009, and modify estimated transportation fund revenues by the corresponding amounts:

	Rate Increase	2009-10 Revenue Change to Bill	2009-10 Revenue Change to Base	2010-11 Revenue Change to Bill	2010-11 Revenue Change to Base	Biennial Revenue Change to Bill	Biennial Revenue Change to Base
a.	1.0 Cent	-$75,451,300	$28,233,000	-$125,320,300	$31,086,000	-$200,771,600	$59,319,000
b.	2.0 Cents	-47,218,300	56,466,000	-94,234,300	62,172,000	-141,452,600	118,638,000
c.	3.0 Cents	-18,985,300	84,699,000	-63,148,300	93,258,000	-82,133,600	177,957,000
d.	4.0 Cents	9,247,700	112,932,000	-32,062,300	124,344,000	-22,814,600	237,276,000
e.	5.0 Cents	37,480,700	141,165,000	-976,300	155,430,000	36,504,400	296,595,000

5. Delete provision.

ALT 5	**Change to Bill** Revenue
SEG	- $260,090,600

Prepared by: Al Runde