

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1727

Bill Subtitle: TO LEVY WHOLESALE SALES TAXES ON GASOLINE AND DIESEL; AND TO USE THE WHOLESALE SALES TAX REVENUES TO PAY BONDS FOR HIGHWAY IMPROVEMENTS IF APPROVED BY THE PEOPLE.

Basic Change :

Sponsor: Representative D. Douglas

HB1727 adds an additional chapter to the Arkansas Code, Title 26, Chapter 64, to levy a new wholesale sales tax on sales of motor fuel (gasoline) and special motor fuel (diesel) in Arkansas. The new wholesale sales tax would only become effective after a majority of the qualified electors of the state approved the issuance of highway maintenance and construction improvement general obligation bonds to be repaid by the wholesale sales taxes levied under the provisions of this Act.

The wholesale sales taxes on gasoline and diesel fuel would be calculated on an annual basis using the average wholesale prices of the fuels. For purposes of the calculation, the "average wholesale selling price" would be the 12-month average per gallon United States Gulf Coast regular average wholesale selling price of gasoline and diesel fuels as published by the Energy Information Administration within the United States Department of Energy or other similar reliable index if the index published by the Energy Information Administration is no longer available. The 12-month average wholesale price for the calendar year would be multiplied by the Arkansas sales tax rate of 6.5% with the result converted to a cents-per-gallon tax rate rounded to the nearest one-tenth of one cent. The per gallon wholesale sales tax would then be added to the existing Arkansas per gallon excise taxes on gasoline (\$.215 per gallon) and diesel fuel (\$.225 per gallon) by the wholesale distributor or supplier when selling the fuel to the retailer. The Department of Finance and Administration (DFA) would make the annual calculation of the total tax rate per gallon and supply the tax rates to the distributors and suppliers for subsequent tax collection when selling the fuel to retailers. The fuel prices as stated at the pump would include all Arkansas taxes levied on the fuels.

If the issuance of the highway maintenance and construction improvement general obligation bonds are approved by the Arkansas electorate during 2017, the new wholesale sales tax on fuels would become effective and DFA would make the calculation of the wholesale sales tax rate for gasoline and diesel fuels to be effective on April 1, 2018. Beginning on April 1, 2019 and each April 1 thereafter, DFA would determine the new wholesale sales tax rate per gallon using the most recent calendar year average wholesale selling prices. The bill provides that declining fuel prices would not result in the wholesale average selling price used in the calculation to determine tax rates to be less than the prices used for the initial year of the wholesale sales tax.

The wholesale sales taxes on gasoline and diesel fuels would be deposited with: seventy percent (70%) to the State Highway and Transportation Department Fund; fifteen percent (15%) to the County Aid Fund; and fifteen percent (15%) to the Municipal Aid Fund. The bill establishes a separate account within the State Highway and Transportation Department Fund to be known as the "2017 Highway Maintenance and Construction Bond Account" for the deposit of revenues collected from the new wholesale sales taxes and used for bond payments.

The proposal is in compliance with the International Fuel Tax Agreement by establishing the required cents-per-gallon tax rate that is used by interstate carriers when reporting taxes to Arkansas. The new wholesale sales tax on diesel fuel would not apply to dyed diesel fuel used in off-road machinery and equipment.

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The bill would also change the deposit of existing state revenues on diesel fuel that are currently deposited to the State Highway and Transportation Department Fund. The bill provides that the first two million, eight hundred thousand dollars (\$2,800,000) per year would be deposited to the "Commercial Freight Routes Improvement Account" with the funds dedicated to improve Arkansas' portion of the National Highway system.

Revenue Impact :

FY2018 - \$ 36.2 Million in Additional Revenues for State, City and County Highways, Streets, and Roads. [Two Months of Tax Deposits only during FY2018. **Annual Amount = \$217.2 Million**)

[Estimate uses FY2016 gasoline and diesel consumption levels. Gasoline = 1,491,564,899 gallons, Diesel = 647,068,193 gallons. Calculation based on estimated average wholesale prices for 2017 of gasoline to be \$1.547 per gallon and \$1.598 per gallon for diesel fuel. Two months of tax deposits would occur during FY2018 if tax is effective on April 1, 2018. If full 12 months, revenue impact would be \$217.2 million. Additional tax per gallon: gasoline - \$.101; diesel - \$.104. Each subsequent year of tax collections would be dependent of total fuel consumption levels in Arkansas and annual average wholesale prices.]

Taxpayer Impact :

Licensed wholesaler distributors and suppliers will collect the wholesale sales tax on motor fuel and distillate special fuel along with the existing excise taxes on fuels. The distributors and suppliers will also change the tax rate per gallon to be collected on an annual basis

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

Procedural Changes :

On an annual basis, DFA would determine the 12-month average wholesale selling price for gasoline and diesel fuels and calculate the tax rates to be collected by wholesale distributors and suppliers beginning on April 1 of each year. DFA will provide notification to the licensed wholesalers of the new tax rates and update the Arkansas tax rate information to IFTA for use by interstate carriers.

Other Comments :

None.

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Legal Analysis :

HB1727 levies new wholesale sales taxes on gasoline and diesel fuel. These tax levies begin on April 1, 2018 and are levied at the rate of 6.5% of the average wholesale selling price for gasoline and diesel for the preceding calendar year. The tax rate will be adjusted on April 1 of each succeeding year based on changes in the average wholesale selling price for gasoline and diesel fuel for the prior calendar year. However, the average selling price for calendar year 2017 is established as a floor so that the tax rate will not fall below that amount. For ease of collection, the DFA director is required to convert the tax rate to a cent-per-gallon rate amount and notify fuel wholesalers of that applicable rate. The proceeds of these new taxes are to be deposited to the 2017 Highway Maintenance and Construction Bond Account in the State Highway and Transportation Department Fund. These new taxes are levied by the General Assembly but will not become effective unless the issuance of bonds is approved by a subsequent vote of the people.

The bill also creates the Commercial Freight Routes Improvement Account within the State Highway and Transportation Department Fund and deposits \$2.8M of current diesel fuel tax collections to that account and dedicates those revenues for use in making improvements to Arkansas's portion of the National Highway System. These provisions of the bill are effective 90 days after adjournment.

The new taxes levied by HB1727 would most likely require a majority vote because they are a different type of tax than the fuel taxes in existence when Article 5, Sec. 38 of the Arkansas Constitution was adopted. Also, the taxes proposed by HB1727 are levied in a different manner, are structurally different than the existing fuel taxes and are imposed on a different taxpayer than the current fuel taxes. These factors all dictate in favor of a majority vote being required for enactment.