

**SUMMARY OF PROPOSAL #9**  
*for consideration by the*  
**ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE**

**TOPIC: Tax on Motor Fuel, Distillate Special Fuel, and Liquefied Gas Special Fuel**

**Summary of Proposal for Consideration**

To create a sales tax on motor fuel, distillate special fuel (diesel), and liquefied gas special fuel in an amount equal to 5¢, 10¢, 12¢, or 20¢.

**Fiscal Analysis**

Based on FY17 consumption for all motor fuels using the ratio of gasoline-to-diesel purchases:

<u>Increase</u>	<u>Additional Revenue</u>
5¢	\$106,843,537
10¢	\$213,687,074
12¢	\$256,424,489
20¢	\$427,374,149

**Legal Analysis**

***Background***

Under Arkansas Code § 26-52-401(11), motor fuel, distillate special fuel, and liquefied gas special fuel are exempt from the sales tax. Arkansas imposes excise taxes on motor fuel at a rate of 21.5¢ per gallon, distillate special fuel at 22.5¢ per gallon, and liquefied gas special fuel at 16.5¢ per gallon. For vehicles that use liquefied gas special fuel, users have the option of paying an annual fee under Arkansas Code § 26-56-304 rather than paying the per gallon amount. The annual fees vary depending on the type of vehicle and whether it is a farm vehicle:

<u>Nonfarm Vehicles</u>	<u>Annual Fee</u>
Passenger cars and motor homes	\$164
Pickup trucks, ½ ton and ¾ ton	\$195
Pickup trucks, 1 ton	\$251
Trucks, maximum gross loaded weight more than 1 ton but not exceeding 22,500 pounds	\$520
Passenger buses except school buses manufactured and licensed as such	\$520
School buses manufactured and licensed as such	\$260
Trucks, maximum gross loaded weight in excess of 22,500 pounds	\$609
 <u>Farm Vehicles</u>	
Pickup trucks, ½ ton and ¾ ton	\$130
Pickup trucks, 1 ton	\$156
Trucks, maximum gross loaded weight more than 1 ton but not exceeding 22,500 pounds	\$178
Trucks, maximum gross loaded weight in excess of 22,500 pounds	\$260

Motor fuel and distillate special fuel were taxed together beginning in 1921 at a rate of 1¢ per gallon. The rate was increased twice in 1923, first to 3¢ and then to 4¢. In 1927, the rate increased to 5¢, and it was increased again in 1931 to 6¢. In 1941, the General Assembly separated the tax on motor fuel and the tax on distillate special fuel, and motor fuel was subject to a tax of 6.5¢ per gallon. In 1965, the rate for motor fuel increased to 7.5¢, and an additional tax of 1¢ was added in 1973. The rate was increased by another 1¢ in 1979, bringing the total tax rate to 9.5¢ per gallon. A 1985 act added 4¢ to the tax, and in 1991, an additional 5¢ were added, bringing the tax to a total of 18.5¢ per gallon. A 1999 act phased in an additional 3¢ per gallon tax on motor fuels over three (3) years, which resulted in the current total tax of 21.5¢ per gallon.<sup>1</sup>

When motor fuel and distillate special fuel were split in 1941, distillate special fuels were subject to taxation at a rate of 6.5¢ per gallon. In 1965, the rate was increased to 8.5¢, and an additional 1¢ tax was added in 1973. In 1979, that rate was again increased by 1¢, bringing the total tax rate to 10.5¢ per gallon. A 1985 act added 2¢ to the tax, and in 1991, an additional 4¢ tax and an additional 2¢ tax were added, bringing the total tax rate to 18.5¢ per gallon. A 1999 act provided for an additional 2¢ per gallon tax in 1999 and an additional 2¢ per gallon tax in 2000, which resulted in the current total tax of 22.5¢ per gallon.<sup>2</sup>

Liquefied gas special fuels were first subject to taxation in 1965 at a rate of 7.5¢ per gallon. At that time, annual fees in lieu of the gallonage tax were provided for, ranging from \$64 to \$234 for nonfarm vehicles and \$50 to \$100 for farm vehicles. In 1973, additional annual fees were provided for, ranging from an additional \$11-\$42 for nonfarm vehicles and an additional \$9-\$18 for farm vehicles. In 1981, the annual fee increase in 1973 was added to the original fee, which brought the total annual fee to \$75-\$279 for nonfarm vehicles and \$59-\$118 for farm vehicles. A 1985 act added 4¢ to the gallonage tax, and additional annual fees were levied, ranging from an additional \$44-\$168 for nonfarm vehicles and an additional \$36-\$72 for farm vehicles. In 1991, an additional 5¢ per gallon tax was added, bringing the tax to the current total of 16.5¢ per gallon, and the annual fees were increased to the current rates.<sup>3</sup>

### ***Potential Legal Issues***

#### **1. Amendment 19 to the Arkansas Constitution**

Amendment 19 to the Arkansas Constitution (incorporated at Article 5, § 38) requires a ¾-vote of the legislature to increase the rate of certain taxes.<sup>4</sup> The motor fuel and distillate special fuel taxes are generally considered to fall under the Amendment 19 requirements. However, Amendment 19 applies only if those specific rates of tax are being increased; if a new tax is created, it is not subject to Amendment 19. To determine whether a tax is a new tax or an increase of an existing tax, courts consider how similar the two taxes are in terms of what is being taxed, who bears the burden of paying the tax, how the tax is structured, and what the

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<sup>1</sup> The motor fuel taxes may be found in Arkansas Code §§ 26-55-205, 26-55-1002, 26-55-1006, 26-55-1201, and 26-56-601.

<sup>2</sup> The distillate special fuel taxes may be found in Arkansas Code §§ 26-56-201, 26-56-502, 26-56-601, and 26-56-802.

<sup>3</sup> The liquefied gas special fuel gallonage taxes may be found in Arkansas Code §§ 26-56-301, 26-56-502, and 26-56-601.

<sup>4</sup> Amendment 19 also allows for the General Assembly to refer such tax rate increases to the voters for their approval, in which case the bill would require only a majority vote of each house.

funds generated by the tax are used for. The Attorney General has stated that the courts have made it clear that the party responsible for paying the tax is an important consideration. Here, the proposed new taxes would be similar to the existing taxes in that they would be levied on the same products, the wholesalers would likely bear the burden of paying the taxes (see IFTA discussion below), and the rate would ultimately be levied in cents-per-gallon (see IFTA discussion below). The proposed taxes would differ from the current taxes in that the revenues generated from the taxes would be used for purposes other than those stated in the Highway Revenue Distribution Law and the rate would presumably be a percentage converted into a cents-per-gallon rate.

2. International Fuel Tax Agreement (IFTA)

The International Fuel Tax Agreement (IFTA), which Arkansas is a member of, contains certain requirements that would restrict how a new tax on fuel could be enacted so that taxes across the states are streamlined for ease of administration. According to DFA, IFTA requires that fuel taxes be based on consumption (*i.e.*, cents-per-gallon) rather than a percentage of the sales price and that the rate be static within a set timeframe so that it changes only according to a certain schedule (*e.g.*, quarterly). IFTA also requires that the tax be levied at the wholesale level.

***Other States***

Sales tax on fuel used to propel a registered motor vehicle on public roadways (assuming the applicable excise tax has been paid on the fuel) is generally exempt from state sales tax:

	<b>Motor Fuel</b>	<b>Distillate Special Fuel</b>	<b>Liquefied Gas</b>
<b>Iowa</b>	Exempt	Exempt	Exempt
<b>Louisiana</b>	Exempt	Exempt	Exempt
<b>Mississippi</b>	Exempt	Exempt	Exempt
<b>Missouri</b>	Exempt	Exempt	Exempt
<b>Oklahoma</b>	Exempt	Exempt	Exempt
<b>Tennessee</b>	Exempt	Exempt	Exempt
<b>Texas</b>	Exempt	Exempt	Not Taxed

Below are the excise tax rates per gallon for the following types of fuel in the following states:

	<b>Motor Fuel</b>	<b>Distillate Special Fuel</b>	<b>Liquefied Gas</b>
<b>Iowa</b>	30.5¢	32.5¢	30¢
<b>Louisiana</b>	20¢	20¢	14.6¢
<b>Mississippi</b>	18¢	18¢	17¢
<b>Missouri</b>	17¢	17¢	Annual Fee <sup>2</sup>
<b>Oklahoma</b>	16¢	13¢	Annual Fee <sup>3</sup>
<b>Tennessee<sup>1</sup></b>	24¢	21¢	17¢
<b>Texas</b>	20¢	20¢	No Tax

<sup>1</sup> Tennessee's rates will increase to 25¢, 24¢, and 19¢, respectively, on July 1, 2018.

<sup>2</sup> Missouri has an annual fee for LPG vehicles, which ranges from \$75 to \$1000, and the state levies a 17¢/gallon tax on out-of-state drivers of LPG vehicles.

<sup>3</sup> Oklahoma has an annual fee of \$50 for LPG vehicles not exceeding one ton and \$150 for LPG vehicles exceeding one ton, and the state levies a 16¢/gallon tax on out-of-state drivers of LPG vehicles.