

EXCISE TAX PROPOSAL #11
for consideration by the
ARKANSAS TAX REFORM AND RELIEF LEGISLATIVE TASK FORCE

TOPIC: Fuel Taxes; Indexing Based on Construction Costs

Summary of Proposal for Consideration

This proposal would index motor fuel and distillate special fuel tax rates based on the inflation rate of construction costs, with the minimum tax rate set at the current tax rate and the maximum tax rate set at three percent (3%) over the tax rate of the previous year. Under this proposal, the indexing of the motor fuel and distillate special fuel taxes would be structured to comply with the International Fuel Tax Agreement (IFTA).

Fiscal Analysis

Without specific guidance on the construction costs and how to adjust the motor fuel taxes, the Department of Finance and Administration (DFA) is unable to provide a fiscal impact statement or analysis.

DFA could publish on a quarterly, biannual, or annual basis, the amount of the adjustment to the motor fuel, distillate special fuel, and other related taxes based on a defined formula provided by legislation. The fiscal impact will be dependent on the inflationary measure chosen by the General Assembly. Additionally, the General Assembly should consider whether such an indexing could allow for a reduction in the motor fuel tax in certain circumstances.

Potential Legal Issues

Amendment 19 to the Arkansas Constitution (incorporated at Article 5, § 38) requires an emergency clause and a ¾-vote of the legislature to increase the rate of certain taxes.¹ The motor fuel and distillate special fuel taxes are generally considered to fall under the Amendment 19 requirements. Accordingly, increasing the motor fuel and distillate special fuel tax rates through indexing would require an emergency clause and a ¾-vote of the legislature. However, the validity of future increases in the tax rates through indexing is uncertain as an increase in the motor fuel and distillate special fuel tax rates requires both a ¾-vote and an emergency clause, and a one-time vote may or may not be valid for future increases under an indexing provision. There does not appear to be any case law or other authority on this issue, so it is unclear what a court would decide based on Arkansas law.

¹ 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.