

SENATE APPROPRIATIONS COMMITTEE

FISCAL NOTE

BILL NO. Senate Bill 35

PRINTER NO. 13

AMOUNT

See Fiscal Impact

FUND

Motor License Fund

DATE INTRODUCED

January 6, 2023

PRIME SPONSOR

Senator Langerholc

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 35 amends Title 75 (Vehicles) by modifying the definition of “average wholesale price” contained in Chapter 90 with regard to the calculation of liquid fuels and fuels tax rates.

The legislation amends section 9002 (relating to definitions) by amending the term “average wholesale price.” Under current law, the definition of “average wholesale price” specifies, in part, that after December 31, 2016, the average wholesale price of all taxable liquid fuels (i.e., gasoline) and fuels (i.e., diesel fuel) shall be determined by the Department of Revenue (department) and in no case shall be less than \$2.99 per gallon. For calendar year 2023, the department determined that the average wholesale price (AWP) used to calculate the oil company franchise tax (OCFT) rate imposed on liquid fuels and fuels is \$3.17 per gallon.

Senate Bill 35 amends the definition of “average wholesale price” such that beginning 30 days from the effective date of this legislation and each year thereafter, the average wholesale price shall be \$2.99 per gallon. By permanently setting the average wholesale price at \$2.99 per gallon, Senate Bill 35 reverses the 2023 tax rate increase going forward and ensures that the oil company franchise tax rate imposed on gasoline and diesel fuel will not increase. Under current law, the average wholesale price is set at a floor of \$2.99 per gallon, which means that the AWP may be higher than \$2.99 per gallon but cannot be less than \$2.99 per gallon. Therefore, the OCFT rate automatically increases if the AWP used in the calculation of the tax rate rises above \$2.99 per gallon, but it cannot decrease.

The legislation requires the Department of Revenue to redetermine, as soon as possible, any changes made to the oil company franchise tax and the alternative fuels tax as a result of the change to the definition of “average wholesale price” and transmit notice of the changes to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin. The aforementioned alternative fuels tax is a much smaller tax in lieu of the gasoline or diesel fuel tax that mirrors the OCFT rate on a gallon-equivalent basis.

This act shall take effect immediately.

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FISCAL IMPACT:

Senate Bill 35 may reduce the amount of liquid fuels, fuels, and alternative fuels taxes deposited into the Motor License Fund in Fiscal Year 2022-23. Because the change in the calculation of the tax rate occurs 30 days from the effective date of the legislation, the exact amount of any decrease depends upon at which point during the fiscal year Senate Bill 35 is enacted into law. The effect in future fiscal years is unknown because current law requires the average wholesale price to be determined on an annual basis, and there is no certainty as to whether the AWP will be higher than \$2.99 per gallon in future years.

For calendar year 2023, the Department of Revenue published its annual notice in the Pennsylvania Bulletin entitled "Rates of Tax on Aviation Gasoline and Jet Fuel for 2023; Oil Company Franchise Tax Rate for 2023; Alternative Fuels Tax Rates for 2023" (52 Pa.B. 7569, Saturday, December 10, 2022). According to the notice, the department determined that the average wholesale price of liquid fuels and fuels for 2023 is \$3.17 per gallon. The unprecedented increase from \$2.99 per gallon to \$3.17 per gallon resulted in a gasoline tax increase from 57.6 cents per gallon in 2022 to 61.1 cents in 2023 and a diesel fuel tax increase from 74.1 cents per gallon in 2022 to 78.5 cents in 2023. By setting the AWP at \$2.99 per gallon, Senate Bill 35 will negate these tax rate increases beginning 30 days after the effective date of the legislation and revert back to the 2022 tax rates.

For fiscal year 2022-23, the oil company franchise tax was projected to generate approximately \$3.75 billion in total restricted and unrestricted Motor License Fund revenues. Over a full twelve-month fiscal year, the OCFT was projected to generate approximately \$312.5 million per month, on average. At the increased rates for 2023, the OCFT will generate approximately \$331.5 million per month, which is an increase of \$19 million per month. Therefore, for each month that Senate Bill 35 is in effect, the Motor License Fund will receive approximately \$19 million less OCFT collections because of the gasoline tax and diesel fuel tax rate cuts resulting from the change to the AWP.