SB 503

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 503 (Senator Kittleman)
Finance

Business Regulation - Motor Fuel - Below Cost Sales

This bill repeals the prohibition against retail service station dealers selling motor fuel below cost except under limited circumstances. Instead, sales of motor fuel would be subject to the Maryland Sales Below Cost Act, which prohibits a retailer from advertising, offering to sell, or selling merchandise at below cost with the intent to diminish or eliminate competition. Repeal of these provisions would also eliminate the Comptroller's specific regulatory authority and duties regarding the sale of fuel below cost and instead require individuals who may be harmed by a competitor selling fuel below cost to file a complaint in a circuit court.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures in FY 2007 and beyond at the Comptroller's Office due to decreased enforcement expenditures. The bill would not affect motor fuel tax revenues.

Local Effect: Potential minimal increase in costs due to additional cases being heard in circuit courts involving sales of motor fuel below cost.

Small Business Effect: Minimal.

Analysis

Current Law: Retail service stations are prohibited from selling motor fuel below cost except under limited circumstances. "Below cost" is defined as a price that is less than the total of: (1) the most recently published average reseller rack cost of motor fuel by grade and quality, as calculated by the Oil Price Information Service (OPIS), for the particular terminal from which the motor fuel was delivered to the retail service station dealer, or the actual invoice cost from the supplier of the product, whichever is lower; and (2) the freight charges and all applicable federal, State, and local taxes not included in the invoice cost.

A retail service station dealer may sell motor fuel below cost if the sale is:

- made in good faith to meet competition;
- made as part of a final liquidation or closing of the business of the retail service station dealer;
- made as part of a bona fide charitable promotion lasting no longer than two days; or
- made under the direction or order of a court or government entity.

The Comptroller must investigate any written complaints of below cost sales and determine within three business days of the receipt of the complaint whether the allegations are true. If the Comptroller determines there is a violation, the Comptroller must issue a stop sale notice and may suspend or revoke the certificate of registration of the offending dealer.

Under the Sales Below Cost Act, a retailer or wholesaler (of any good) with intent to injure a competitor or to destroy competition may not advertise, offer to sell, or sell at retail sale or wholesale sale any item of merchandise at less than its cost to the retailer or its cost to the wholesaler, respectively. On complaint from a person who claims to be injured from the action, a circuit court may issue an injunction against a retailer or wholesaler who is found to be engaging in selling merchandise below cost as prohibited. This Act does not apply to sales of motor fuel by retail service station dealers.

Background: On average, gasoline retailers sell 8 million gallons of gasoline daily, in addition to 1.5 million gallons of diesel. As of September 2005, there are 2,077 retail service stations in Maryland. Of those, 695 or approximately one-third are unbranded gasoline stations. Unbranded gasoline stations, such as Wawa or Costco, are not affiliated with a particular brand, but purchase gasoline from a variety of sources. Data on the number of unbranded stations operating under a common name were available for all these stations except Crown. Crown stations comprise approximately 4% of all retail gasoline stations. Approximately 54% of unbranded gasoline stations are one-station operations. The other stations are under a common name that operates more than one station. Thirteen percent of unbranded stations are under a common trade name that operates 2 to 5 stations, 8% have 6 to 10 stations, and 25% have more than 11 stations.

Branded stations are retail stations that sell a brand of gasoline affiliated with a major oil company (Exxon, BP, etc.) Branded stations in Maryland may be (1) company owned, but operated by independent lessee-dealers; or (2) retail outlets owned and operated by independent open dealers, who agree to sell only branded gasoline. Maryland's divorcement law prohibits refiners from owning and operating a retail service station. Exxon/Mobil, Shell, Citgo and BP/Amoco have the largest branded gasoline presence in the State, with approximately 20%, 15%, 13%, and 10% of all Maryland retail stations respectively.

In response to the perception that larger, regional fuel providers were selling fuel at below cost and putting competitive price pressure on independent service stations and that the Sales Below Cost Act had not been sufficient in preventing the conduct, Chapter 616 and 617 of 2001 were enacted. Chapter 616 and 617 prohibited retail service station dealers from selling motor fuel below cost except under limited circumstances. HB 127 would repeal these laws.

Additional Information

Prior Introductions: None.

Cross File: HB 127 (Delegate Miller, *et al.*) – Economic Matters

Information Source(s): Comptroller's Office, Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2006
mll/hlb

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