

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 798
Economic Matters

(Delegate Miller, *et al.*)

Business Regulation - Motor Fuel - Definition of Below Cost

This bill alters the definition of “below cost” for the purpose of calculating the minimum price a retail service station dealer can charge for motor fuel.

Fiscal Summary

State Effect: None. State operations would not be materially affected.

Local Effect: None.

Small Business Effect: Lowering the minimum motor fuel price could result in fewer complaints against retail service station dealers for selling below cost; however, since there were only 16 complaints in FY 2006, none of which were substantiated, it is assumed this effect would be minimal.

Analysis

Bill Summary: Below cost means, in addition to any freight charges and all applicable federal, State, and local taxes, a price that is less than the total of the most recently published low, *instead of average*, reseller rack cost of motor fuel by grade and quality, as calculated by the Oil Price Information Service, 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.

Current Law: While there are no minimum prices or maximum prices set for gasoline, retail service station dealers are prohibited from selling motor fuel below cost, unless the sale is made • in good faith to meet competition; • as part of a final liquidation sale; • as

part of a charitable promotion lasting no longer than two days; or • under the order of a court or government entity.

Below cost means a price that is less than the total of the most recently published *average* reseller rack cost of motor fuel by grade and quality, or the actual invoice cost from the supplier of the product, whichever is lower. In addition, the price must also include the freight charges and all applicable federal, State, and local taxes not included in the invoice cost.

Voluntary allowances means temporary price reductions in the wholesale price offered to a retailer in order to enable the retailer to meet the price of a competing retailer. After September 30, 2009, all producers, refiners, or wholesalers of motor fuel must extend all voluntary allowances uniformly to all retail service station dealers supplied and must apportion all gasoline and special fuel uniformly between retailers in case of shortage.

Background: According to the Attorney General's Office, in fiscal 2006 there were 16 complaints for selling gasoline below cost. None were valid.

State Fiscal Effect: Using the low reseller rack price could lower the minimum motor fuel price. Lowering that price could result in fewer complaints about a retail service station dealer selling gasoline below cost; however since there were only 16 complaints for this offense in fiscal 2006, it is assumed that the change would be minimal, and would not substantially affect State operations or finances. Using the low reseller rack price to calculate minimal motor fuel pricing would have no operational effect on the Comptroller's Office.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Attorney General's Office (Consumer Protection Division), Comptroller's Office, Department of Legislative Services

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