HB 77

Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 77 (Delegates Miller and Rudolph)
Economic Matters

Business Regulation - Motor Fuel - Below-Cost Sales - Enforcement

This bill institutes a civil penalty, to be deposited in the general fund, for motor fuel retailers who are found to be selling fuel at below-cost prices.

Fiscal Summary

State Effect: General fund revenues increase by $7,600 in FY 2010 due to the bill's penalty provision and the bill's October 1 effective date. Future years reflect annualization and an annual 25% reduction in fine revenue due to the anticipated deterrent effect of the penalty. No effect on expenditures.

(in dollars)	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
GF Revenue	$7,600	$7,600	$5,700	$4,300	$3,200
Expenditure	0	0	0	0	0
Net Effect	$7,600	$7,600	$5,700	$4,300	$3,200

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A dealer of motor fuels who is accused of selling or offering to sell fuel below cost has three business days to provide documentation to the Comptroller's Office regarding the cost of the fuel. The Comptroller's Office may issue a stop sale notice or order the dealer to alter the sale price to a level that is not below cost, pending the outcome of the investigation.

If the Comptroller's Office determines that the dealer sold motor fuel below cost, the dealer is required to pay a civil penalty. The amount of the penalty is determined by multiplying the volume of fuel sold below cost by the difference between the below-cost price and the legitimate price of the fuel.

Current Law: Retail service stations may not sell motor fuel below cost except under limited circumstances. "Below cost" is defined as a price that is less than the total of the most recently published 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; and 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 of a retail service station; 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's Office investigates complaints of below cost sales and determines within three business days of receiving the complaint whether the allegations are true. If the Comptroller's Office determines there is a violation, it must issue a stop sale notice and may suspend or revoke the certificate of registration of the offending dealer. There is currently no monetary penalty for violating the motor fuel below-cost sales law.

Background: As of January 2008, there were 2,129 retail service stations in Maryland. Of those, 839 were unbranded gasoline stations. Unbranded gasoline stations, such as Wawa or Costco, purchase gasoline from a variety of sources. Roughly half of unbranded gasoline stations are one-station operations. The other stations are under a common name that operates more than one station.

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 company owned but operated by independent lessee-dealers, or retail outlets owned and operated by independent dealers who agree to sell only branded gasoline. Maryland law prohibits refiners from owning and operating retail service stations.

In response to the perception that larger, regional fuel providers were selling fuel below cost and putting competitive price pressure on independent service stations, Chapters 616 and 617 of 2001 were enacted. These acts prohibit retail service station dealers from selling motor fuel below cost except under limited circumstances.

State Fiscal Effect: In fiscal 2008, the Comptroller's Office investigated 32 complaints of below-cost pricing and found 13 retail service stations in violation of the statute. Each station raised its price to comply with the law.

The Comptroller's Office advises that if the civil penalty had been in place, the total fines assessed against these 13 violators would have been $10,179. The Comptroller's Office determined that 26,100 gallons were sold below cost (8,700 gallons per day). The fuel was sold at an average of $.03 per gallon below cost. The Comptroller's Office advises that the number of offenses that occurred in fiscal 2008 is indicative of the future number of violations. Based on this analysis, general fund revenues increase by $7,634 in fiscal 2010, which accounts for the bill's October 1, 2009 effective date.

Legislative Services assumes a 25% reduction in revenue for subsequent fiscal years due to the deterrent effect of the penalty.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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mlm/mcr

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