

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 145

(Chair, Budget and Taxation Committee)(By Request -
Departmental - Comptroller)

Budget and Taxation

Ways and Means

**Motor Fuel Tax - Personal Liability - Limited Liability Companies and Limited
Liability Partnerships**

This departmental bill establishes personal liability for unpaid motor fuel tax, interest, and penalties (unpaid motor fuel tax) for members of limited liability companies (LLCs) and partners of a limited liability partnership (LLP). Personal liability for the unpaid motor fuel taxes will extend to any person who exercises direct control over the fiscal management of the company or partnership.

Fiscal Summary

State Effect: Potential increase in general fund, Transportation Trust Fund (TTF), and Chesapeake and Atlantic Coastal Bays 2010 Trust Fund revenues beginning in FY 2012 due to increased motor fuel tax compliance. Expenditures are not affected.

Local Effect: Potential increase in local highway user revenues beginning in FY 2012 due to increased motor fuel tax compliance. Local expenditures are not affected.

Small Business Effect: The Comptroller's Office has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: A person (individual, corporation, partnership, or any other entity) required to pay the motor fuel tax is required to pay the tax with the return that covers the period in which the person received, sold, or used the motor fuel. Motor fuel licensees,

except for Class “W” licensees, are required to post security for motor fuel tax in an amount specified by the Comptroller subject to specified minimum amounts.

The Comptroller’s Office files an assessment against a person if it determines that the motor fuel tax due exceeds the amount paid on a return or if a return was not filed. If both the buyer and seller are liable for unpaid motor fuel taxes, the Comptroller may make an assessment against both parties. If a corporation, other than a nonstock, not-for-profit corporation, is required to pay the motor fuel tax, personal liability for unpaid motor fuel taxes extends to any officer of the corporation who exercises direct control over its fiscal management.

Background: Motor fuel taxes totaled \$720.2 million in fiscal 2010, including \$514,000 in penalties and interest. Eighty motor fuel licensees are currently incorporated as LLCs with corporations comprising the remaining licensees (between 350 and 550). The Comptroller’s Office advises that it recently assessed the officers of an out-of-state corporation and is pursuing litigation against the officers in the Maryland Tax Court as a result of the corporation’s failure to pay \$2 million in unpaid motor fuel taxes.

State and Local Revenues: According to the Comptroller’s Office, the bill will provide legal authority to impose a tax lien on the personal assets of officers of a LLC or LLP for unpaid motor fuel taxes. The bill may increase motor fuel tax compliance in instances when the amount of unpaid motor fuel taxes is greater than the security amount posted with the Comptroller or when the person failed to post security. As a result, general fund, TTF, and Chesapeake and Atlantic Coastal Bays 2010 Trust Fund revenues may increase beginning in fiscal 2012.

Local governments receive a portion of TTF revenues as local highway user revenues for the purpose of constructing and maintaining local roads. An increase in motor fuel taxes will also increase local highway user revenues.

Additional Information

Prior Introductions: None.

Cross File: HB 253 (Chair, Ways and Means Committee) (By Request – Departmental – Comptroller) – Ways and Means.

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

Fiscal Note History: First Reader - February 7, 2011
mc/hlb Revised - Senate Third Reader - March 25, 2011

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Motor Fuel Tax – Personal Liability – Corporations, Limited Liability Companies, and Limited Liability Partnerships

BILL NUMBER: SB 145

PREPARED BY: Comptroller

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.