

AMENDED SUBSTITUTE HOUSE BILL NO. 62
OHIO SENATE
TRANSPORTATION, COMMERCE AND WORKFORCE COMMITTEE
TESTIMONY PRESENTED BY
RYAN HOWARD
TRUENORTH
BRECKSVILLE, OHIO

Good morning, Chairman McColley, Vice Chair Uecker, and Ranking Member Antonio, and good morning to all members of the Senate Transportation, Commerce and Workforce Committee. Thank you for your attention and time this morning.

My name is Ryan Howard. I am the chief operating officer for *truenorth*, headquartered in Brecksville, Ohio. *truenorth* is a partnership between the Lyden family and Shell Oil Products US. It was founded in 1999 and is a regional convenience retailer offering premier branded products and services at over 100 company-operated stores. In addition, *truenorth* supplies fuel to nearly 200 other dealers. The Lyden family has been in the petroleum business for 100 years, with both the 3rd and 4th generations now leading growth and development. Today, *truenorth* employs over 1,100 hard-working and dedicated Ohioans.

truenorth is a proud member of the Ohio Petroleum Marketers & Convenience Store Association (OPMCA). OPMCA is the statewide trade association representing hundreds of independent, small businesses in the petroleum and convenience industry. OPMCA members own and operate the overwhelming majority of Ohio's 4,544 convenience stores selling motor fuel and employing over 85,290 Ohioans. This robust industry sector in our State posted \$22 billion in total sales in 2017, of which \$13.5 billion were motor fuel sales.

OPMCA members serve time-starved motorists across Ohio, and so much more. The association's members work around the clock to supply the fuel to move commerce through the state, and

to keep companies energized and open for business. Additionally, OPMCA members heat the homes of hundreds of thousands of Ohioans, drive the economy through job creation, and strengthen local communities through philanthropic engagement. It is a privilege for me to serve as Vice Chairman on the OPMCA Board of Directors.

I appear before you to offer testimony on Amended Substitute House Bill 62 (House Bill 62), the biennial budget for the Ohio Department of Transportation and Public Safety, as passed by the Ohio House of Representatives last week.

I recognize the difficult economic decisions Governor DeWine faced, and that you and the Members of the Ohio Senate currently face as you carefully craft a state transportation budget to support the current and future needs of our state's deteriorating infrastructure. OPMCA also recognizes the vital role well-maintained roads and bridges play in advancing Ohio's robust economy and in the growth of our member businesses.

While I was encouraged by some of the revisions included in House Bill 62, I remain deeply disheartened by the failure to restore the dealer allowance to historic levels for efficiently collecting and timely remitting the state motor fuel tax. OPMCA expressed members' concerns to the House via oral testimony, through phone calls from marketers and retailers across Ohio, and in hand-delivered letters to Speaker Householder and all Members of the Ohio House of Representatives. Attached to this testimony you will find a copy of that hand-delivered letter for your review and consideration. I, and the rest of OPMCA's membership, hope the Senate will more favorably consider our issues. That said, as introduced, and in its current form, OPMCA opposes House Bill 62.

MOTOR FUEL DEALER ALLOWANCE

The principal reason for our opposition is the failure to restore the dealer allowance for collecting and remitting the motor vehicle fuel tax. For decades Ohio provided a dealer allowance to

compensate wholesale and retail dealers for their service and their burdens in collecting and remitting motor vehicle fuel tax. The allowance was set at 3%. That 3% was split 2% for wholesale dealers and 1% for retail dealers. Some years ago, during transition caused by tax reform in 2005, the state altered the allowance. The 3% allowance was reduced to 1%. We were advised that the reduction was temporary, but it has been held there. House Bill 62 perpetuates that reduction by continuing to include “temporary law” provisions that negate the applicable Ohio Revised Code language.

Over the years, it has been evident to OPMCA members that there is a misunderstanding about the allowance. Because we are here before this Committee—the Committee charged with vetting fuel tax-related proposals—we want to share with you why the fuel tax allowance is critically important to OPMCA members, including our business, and why the allowance should be restored to the level historically provided.

The motor fuel tax allowance, provided to licensed motor fuel dealers who timely remit the tax to the State, is justified for the following reasons expressly stated in the Ohio Revised Code: to cover the costs of compiling the report, as the cost of evaporation, shrinkage, or other unaccounted-for losses.

SERVICE OF COLLECTING AND GUARANTEEING PAYMENT OF THE MOTOR FUEL TAX

The Ohio motor fuel tax is collected, administered, and remitted by licensed motor fuel dealers, like OPMCA members. These dealers remit to Ohio approximately \$1.8 billion per year in State motor fuel tax. Motor fuel dealers must pay this tax regardless of whether they are able to collect the amounts they charge their customers on resale. In other words, licensed fuel dealers serve as guarantors ensuring the State receives the tax. Licensed fuel dealers are allowed no bad debt deduction. Licensed fuel dealers receive no write-off for customer bankruptcy, drive-off fuel thefts or other losses such as tank leakage, spillage or other casualty. Invoices for the fuel purchased and the tax thereon are payable to the State irrespective of whether payment is received on the resale.

In addition, licensed motor fuel dealers bear personal responsibility for the tax beyond the responsibility imposed on the business entity. In other words, our homes, retirement accounts and children's education funds are at risk. Ohio law further requires licensed fuel dealers to pay annual premiums to purchase performance bonds as additional security for the State to receive tax payment.

On top of these risks and costs are the overhead costs of preparing monthly returns, cooperating in field and desk audits, and most recently, in complying with the Department of Taxation's initiative to automate all motor fuel tax reporting and filing. Software and personnel costs alone are tens of thousands of dollars annually.

To be sure, OPMCA members provide a backstop for the State in collecting motor fuel tax. But, there are undeniable costs and risks that we bear, and the allowance was designed to help offset those costs.

EVAPORATION: MYTHS & MISCONCEPTIONS

Evaporation is the tendency of a liquid to draw off into vapor or fumes when exposed to air. It is basic chemistry, yet there seems to be a lack of understanding when it comes to fuel evaporation. In the past, some have discounted evaporation as a valid reason for the allowance and have suggested that due to technological advances in concert with stricter EPA regulations, levels of evaporation have diminished and, therefore, the allowance is no longer justifiable. This is simply not true.

The levels of evaporation have not changed due to technological advances. However, these have allowed for the capture of vapors during the transfer of motor fuel from a terminal into a transport truck, then from the transport vehicle into the underground storage tank at a retail station. Let me explain.

Motor fuel is delivered into underground storage tanks at a retail station from vapor tight transport trucks. Pipes and valves interconnecting the underground storage tank and the transport

truck create a "closed loop," referred to as Stage I vapor recovery system. Vapors in the underground storage tank, displaced by the incoming fuel, are routed through a hose into the transport truck, instead of being released into the air to form ozone. The Stage I system returns the displaced vapors to the transport truck, and then the transport truck returns those vapors back to the terminal the next time they pick up a load of fuel.

The bottom line is this: We pay the motor fuel tax on the amount of liquid fuel we receive, but we are unable to sell that same amount of fuel due to evaporation. Evaporation, combined with thermal shrinkage and the economic risk and responsibilities of collecting tax, continues to justify the motor fuel tax allowance, but also justifies restoring the fuel tax allowance to historic levels.

THERMAL SHRINKAGE OF FUEL

The science and the physical properties of fuel at varying temperatures is the core fuel shrinkage issue. Ohio imposes motor fuel tax upon the "receipt" of gasoline by licensed fuel dealers. This "receipt" occurs after fuel processing at a refinery. When crude oil is refined, it can reach temperatures of over 1,000° F. After refining, the fuel cools significantly, but remains relatively warm at the start of its journey through the fuel distribution network for sale to a licensed motor fuel dealer.

It is at this point that the gasoline is sold to licensed fuel dealers. It is also at this point, when the fuel is warm, that it is measured by volume for Ohio motor fuel tax purposes. That is to say that licensed motor fuel dealers must pay the motor fuel tax on the volume in gallons they receive. The licensed fuel dealers then transport this fuel by truck to smaller aboveground storage facilities and then to retail gasoline stations where the fuel is unloaded into underground retail tanks.

During this transit, because of the lower ambient temperature outdoors, the fuel temperature lowers from temperatures that could be as hot as 100° F. The average outdoor temperature in Ohio

over the course of a year is 59° F. This resulting change in fuel temperature causes a volumetric shrink. This shrinkage is measurable and approximates 1% volume per 15° F change in gasoline temperature.

When the fuel is then metered for sale by the licensed fuel dealer to the retail station or to another customer, its volume has shrunk because its temperature is lower than before. Thus, the licensed fuel dealer cannot sell the same volume of fuel that it purchased and received at the terminal. Even so, Ohio tax laws require the licensed fuel dealer to report and pay the motor fuel tax on the volume measured when received at the terminal.

In recognition of the laws of physics and, frankly, as a matter of fairness, the Ohio General Assembly decided long ago to provide licensed fuel dealers protection from the fuel loss caused by volumetric shrinkage during transport. This protection was imbedded in the 3% allowance. Otherwise, the State would grant itself a windfall by imposing motor fuel tax on gallons that disappeared through shrinkage, gallons never consumed on Ohio's roads, phantom gallons. In what other area of commerce does government tax its citizens or businesses for the purchase and resale of "nothing?"

The laws of physics are indisputable. Gasoline shrinks by about 1% volume for every 15° F in temperature drop. This alone justifies the 3% allowance historically provided to motor fuel dealers.

CREDIT CARD PROCESSING FEES

Another critical point for the Committee to understand is the amount of fees our industry pays when customers pay for fuel with credit cards. Twenty years ago, roughly 30-40% of the fuel sold by retail dealers was paid for using credit or debit cards. Today, we experience that method of payment 80% of the time or more. It is, and will continue to be, the preferred method of payment.

Credit card companies charge retailers a processing fee of approximately 2.5% of the gross transaction amount. Accordingly, if 10.7¢ in Ohio gasoline tax per gallon is passed into law, the retailer

will pay approximately 1.0¢ (.968¢ to be exact) in fees per gallon, just for the state tax component of the fuel. Thus, for every million gallons of fuel sold, the retailer will pay fees of \$9,680. For some perspective, we have individual stations that sell over 3,000,000 gallons per year. At that level of fuel business, our annual credit card processing fees are over \$20,000 per store (assuming credit card payment on 80% of the fuel) and I note that we operate over 100 retail stations in Ohio. Said another way, our business will pay over \$20,000 per store to efficiently collect and timely remit the gas tax on behalf of the State of Ohio while receiving an allowance to do so woefully inadequate to cover credit card processing fees just on the gas tax.

It was the right thing to do decades ago. It is fair to restore that allowance now. The math is obvious. We need restoration of the allowance if we are to shoulder the costs and burdens associated with assisting Ohio in motor fuel tax collection.

SALES TAX ALLOWANCE: APPLES TO ORANGES

The motor fuel tax allowance is sometimes mistakenly compared to the prompt payment discount offered to retailers and certain service providers who make full payment of the sales tax to the Ohio Department of Taxation on or before its due date. These allowances are dissimilar and easily distinguishable.

The Ohio sales tax is a "trust" tax that is to be collected by all retailers and certain service providers when they make taxable retail sales. The sales tax is called a "trust" tax because the consumer has entrusted this tax to retailers and certain service providers with the understanding that it will be reported and paid to the State of Ohio in a timely manner.

Retailers and certain service providers are afforded a prompt payment discount for sales tax returns filed timely. The discount is .75 of 1% (0.0075) of the tax liability. The discount only applies if the return and full payment are received by the Ohio Department of Taxation on or before the due date.

However, it is important for the Committee to understand that, unlike motor fuel dealers, retailers and other service providers are not required to hold a bond unless they have failed to maintain economic good standing with the Ohio Department of Taxation. Bonds are required for all licensed motor fuel dealers. Retailers and certain service providers are subject to personal liability. However, unlike licensed motor fuel dealers, retailers and certain service providers are allowed bad debt deductions. Licensed motor fuel dealers are not. Moreover, retailers and certain service providers do not experience physical, thermal shrinkage loss issues nor evaporation loss issues. As noted previously, the current 1% dealer allowance is insufficient to cover these losses.

CONCLUSION

To reiterate, OPMCA opposes House Bill 62 in its present form. As this Committee carefully crafts a biennial budget for the Ohio Department of Transportation and Public Safety designed to support the current and future needs of our state's deteriorating infrastructure, we respectfully request that you also restore the collection allowance to historic levels. Thank you for the opportunity to testify this morning. I would be happy to answer any questions you may have. Thank you.

The Honorable Larry Householder
And Members of the Ohio House of Representatives
77 South High Street
Columbus, Ohio 43215

Dear Speaker Householder and Members of the Ohio House of Representatives:

As you begin to conclude your review of the biennial budget for the Ohio Department of Transportation and Public Safety and move forward toward its passage in your Chamber, the Ohio Petroleum Marketers and Convenience Store Association feels compelled to further stress our viewpoint with you.

The Ohio Petroleum Marketers and Convenience Store Association (OPMCA) is the statewide trade association for petroleum wholesalers and retailers. OPMCA members own and operate the overwhelming majority of Ohio's 4,544 convenience stores selling motor fuel and employ over 85,290 Ohioans.

We recognize the difficult economic decisions Governor DeWine faced, and that you currently face as you carefully craft a state transportation budget to support the current and future needs of our state's deteriorating infrastructure. OPMCA also recognizes the vital role well-maintained roads and bridges play in advancing Ohio's robust economy and in the growth of our businesses.

OPMCA writes this morning to acknowledge your leadership for conducting a thorough, independent assessment of actual infrastructure funding needs and for vetting alternative funding solutions in a transparent, equitable manner. While we are encouraged by some of the revisions announced last night in Substitute House Bill 62 (Sub. H.B. 62), OPMCA remains deeply disheartened to learn that our voice has still not been heard.

As introduced, and in its current form, OPMCA opposes Sub. H.B. 62. We are incredibly discouraged by the failure to restore to historic levels the dealer allowance for efficiently collecting and timely remitting the state motor fuel tax.

The motor fuel tax allowance provided to licensed motor fuel dealers who timely remit the tax to the state is expressly stated in the Ohio Revised Code: to cover the costs of compiling the report, and evaporation, shrinkage, or other unaccounted-for losses. Those justifications have hardly diminished. Rather, the justifications for the dealer allowance are greater now more than ever.

The Ohio motor fuel tax is collected, administered, and remitted by licensed motor fuel dealers—OPMCA members—who remit to Ohio approximately \$1.8 billion per year. Motor fuel dealers must pay this tax regardless of whether they are able to collect the amounts they charge their customers on resale. Licensed fuel dealers serve as guarantors ensuring the state receives the tax. Licensed fuel dealers are allowed no bad debt deduction and receive no write-off for customer bankruptcy, drive-off fuel thefts or other losses such as tank leakage, spillage or other casualty.

In addition, licensed motor fuel dealers bear personal responsibility for the tax beyond the responsibility imposed on the business entity. Ohio law further requires licensed fuel dealers to pay annual premiums to purchase performance bonds as additional security for the state to receive tax payment. Without question, OPMCA members provide a backstop for the state in collecting motor fuel tax. But, there are undeniable costs and risks that we bear, and the allowance was designed to help offset those costs.

What is paramount for Members of the Ohio House of Representative to understand is the amount of fees our industry pays when customers pay for fuel with credit cards. Twenty years ago, roughly 30-40% of the fuel sold by retail dealers was paid for using credit or debit cards. Today, we experience that method of payment 80% of the time or more. It is, and will continue to be, the preferred method of payment.

Until last year, or perhaps the year before, the two most successful businesses in the petroleum and convenience industry were Visa and MasterCard. That is because for decades the industry paid more in credit card fees than the industry earned in pre-tax profit. According to national industry data, in 2017 an average convenience store in Ohio paid in credit and debit card fees just \$1,956 less than the store earned in pre-tax profit.

Credit card companies charge retailers a processing fee of approximately 2.5% of the gross transaction amount. For some perspective, OPMCA's Board Vice Chairman owns 100 stations, most of which sell over 3,000,000 gallons per year. If the changes to Sub. H.B. 62 are ultimately passed into law, when the increased tax on gasoline is fully phased-in in 2021, his annual credit card processing fees will be over \$22,000 per store in each of his 100 stores. Said another way, this business will pay over \$22,000 per store to efficiently collect and timely remit the gas tax on behalf of the State of Ohio while receiving an allowance to do so woefully inadequate to cover credit card processing fees on the tax alone.

Additionally, the physical properties of fuel at varying temperatures create an issue specifically addressed by the allowance. Ohio imposes motor fuel tax on licensed fuel dealers upon the "receipt" of gasoline—after processing at a refinery. The fuel that is received cools significantly after refining, but remains relatively warm at the beginning of its journey through the fuel distribution network for eventual sale to a licensed motor fuel dealer. It is at this point, when the fuel is still warm, that it is measured by volume for Ohio motor fuel tax purposes.

As fuel cools during transit, the change in temperature causes a measurable volumetric shrinkage of roughly 1% volume per 15° F change in gasoline temperature. This shrinkage makes it impossible for the licensed fuel dealer to sell the same volume of fuel it purchased and received at the terminal. Yet, Ohio tax laws require the licensed fuel dealer to report and pay the motor fuel tax on the volume measured when received at the terminal, regardless of what fuel remains by the time it reaches the point of sale. This fact alone justifies the 3% allowance historically provided to motor fuel dealers.

For these reasons, among others, it is only fair to restore that allowance now. The math is obvious and indisputable. OPMCA members need full restoration of the allowance if we are to shoulder the costs and burdens associated with ensuring Ohio's motor fuel tax is efficiently collected and timely remitted on behalf of the State of Ohio. We urge you to reconsider.

Sincerely,


Jennifer B. Rhoads, Esq.
President and CEO

cc: Will Englefield, Englefield Oil Company, Heath, OH
Mark Harper, Guttman Energy, Inc., Belle Vernon, PA
Ryan Howard, *truenorth*, Brecksville, OH
Nick Lacaillade, Certified Oil Company, Columbus, OH
Zach Santmyer, Santmyer Companies, Inc., Wooster, OH
Tonia Fisher, Free Enterprises, Inc., Medina, OH
Doug Hartley, The Hartley Company, Cambridge, OH
Denny Knott, Ney Oil Company, Ney, OH
Greg Erhlich, Beck Suppliers, Inc., Fremont, OH
Jason Wittekind, Triumph Energy Corporation, Harrison, OH
Bob Manning, Lykins Energy Solutions, Milford, OH
Jennifer Berlin, Ullman Oil Company, Chagrin Falls, OH