



AMENDED SUBSTITUTE HOUSE BILL NO. 26
OHIO SENATE
TRANSPORTATION, COMMERCE AND WORKFORCE COMMITTEE
TESTIMONY PRESENTED TO
RYAN HOWARD
TRUENORTH
BRECKSVILLE, OHIO

Good morning, Chairman LaRose, Vice Chair Kunze, and Ranking Member Tavares, 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* Energy, headquartered in Brecksville, Ohio. *truenorth* Energy, a partnership between the Lyden family and Shell Oil Products US was founded in 1999 and is a regional convenience retailer offering premier branded products and services at over 100 company-operated stores, in addition to supplying fuel to nearly 200 dealers. The Lyden family has been in the petroleum business for 98 years, with both the 3rd and 4th generations now leading growth and development. Today, *truenorth* Energy employs over 1,100 hard-working and dedicated Ohioans.

truenorth Energy is a proud member of the Ohio Petroleum Marketers & Convenience Store Association (OPMCA). The Ohio Petroleum Marketers & Convenience Store Association is the statewide trade association representing more than 500 independent, small businesses in the petroleum and convenience industry. OPMCA members own and operate the overwhelming majority of Ohio's 6,371 convenience stores and employ over 105,000 Ohioans. This robust industry sector in our State posted \$23.9 billion in total sales in 2015, of which \$16.3 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 on the OPMCA Board of Directors.

I appear before you to offer testimony on Amended Substitute House Bill 26 (House Bill 26). As introduced, House Bill 26 proposed to shift the point of collection for the motor fuel tax, which would be devastating to fuel wholesalers and retailers across Ohio. Let me explain why. Currently, the incidence of the tax occurs when we buy and receive the fuel at the terminal rack, where the fuel is picked up with our own transport trucks. We owe the Ohio tax on motor fuel received unless we export the fuel out of Ohio or sell it to the federal government. We remit the tax in the month that follows the date of purchase.

However, our commercial terms with the terminal operator dictate that we must pay for the fuel within three (3) to ten (10) days of purchase. House Bill 26 would force us to pay the 28 cents per gallon of Ohio motor fuel tax to the terminal within the same time period. This would choke lines of credit and the

ability to purchase fuel, having the most detrimental impact to the smallest marketers in the state. We would lose credit in amount and time. We would be able to buy less fuel and we would be forced to pay the tax on average thirty-five (35) to forty-two (42) days earlier than we do now. In some cases, we would be forced to pay the tax before we receive payment on our sale of the fuel.

The shift in the collection point for the motor fuel tax would provide a competitive advantage for the integrated oil companies who operate their own retail network, as they would still recognize the same remittance date. However, remittance date would be accelerated for smaller marketers not holding a position at the terminal. This pressure on our business, and those like us, would impact the motoring public in the form of higher gas prices and fueling inconveniences. Some wholesale marketers and retailers would fail because of the proposed shift. As a result, the motoring public would have fewer options for fuel purchases. They would have to drive more miles to find an open retailer who would sell gasoline at an unnecessarily inflated price simply because they have no competition.

The shift in the collection point would devastate small businesses and adversely affect Ohio motorists, which, to me, begs the question, “Why was the proposal included in the As Introduced version of House Bill 26 in first place?” A proponent speaker of House Bill 26 suggested in testimony that changes in the point of motor fuel taxation are necessary to fill “holes and gaps” in the tax system where tax is “leaking” ... to the tune of \$90 million a year. This claim has yet to be substantiated.

OPMCA members have worked with the Ohio Department of Taxation for decades to improve, monitor and modernize the motor fuel tax laws. We have helped the Ohio Department of Taxation on such tax improvement programs as implementing dyed diesel provisions and automating fuel tax filings. We also continue to monitor compliance in the field. In my view, and in the view of the association, the idea that \$90 million per year is escaping through tax evasion is a farce. It simply is not credible.

We are encouraged that the Ohio House scrutinized the proposed shift in the fuel tax collection point, determined the move would be detrimental to small businesses in every county across Ohio, and elected to maintain current law. We urge this Committee to support this change as reflected in the As Passed version of House Bill 26.

In the course of this dialogue, it became evident that there is widespread misunderstanding about the allowance provided to licensed motor fuel dealers who timely remit the motor fuel tax. As I stand before this Committee—the Committee charged with vetting fuel tax-related proposals for this Chamber—I would be remiss if I did not take this opportunity 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 to motor fuel dealers.

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, and 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 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 drive-off fuel thefts or other losses such as tank leakage, spillage or other casualty. Invoices for the fuel and the tax thereon are payable to the State irrespective of whether the seller receives payment or not.

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. As if all this were not enough, 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.

OPMCA members provide these services as a backstop for the State as a condition of their license. But, there are undeniable costs and risks that we bear, and the allowance was designed to help offset those costs.

Other Ohio taxes provide allowances, and for good reason. Sales tax gives a licensed vendor a "prompt payment allowance" of 0.75%. However, the vendor receives a bad debt deduction, has no bond requirements and, as I will explain, has no thermal shrinkage issue. These differences justify the 3% allowance historically provided to motor fuel dealers. Tobacco wholesale dealers receive an allowance of 1.8% and there is no thermal shrinkage with that commodity.

Thermal Shrinkage of Fuel

The science and the physical properties of fuel at varying temperatures is the 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 as it moves 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 received at this point. 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 delivered 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.

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. To do otherwise would be to knowingly permit the State to receive 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 use of "nothing?"

The laws of physics are indisputable. Gasoline shrinks by about 1% volume for every 15° F in temperature drop. Outside of the other two statutory reasons, the laws of physics alone justify the 3% allowance historically provided to motor fuel dealers.

The Myth of Evaporation

Evaporation is the tendency of a liquid to draw off into vapor or fumes when exposed to air. It's basic chemistry, yet there seems to be a lack of understanding when it comes to fuel evaporation. In fact, a proponent speaker of House Bill 26 as introduced suggested in testimony 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, technological advances have allowed for the capture of vapors during the transfer of motor fuel from a terminal into a transport truck, and 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 truck. 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.

In closing, it is my hope that I have provided valuable insight into the unique nuances of the motor fuel tax collection point and allowance that may prove useful to you as you continue your deliberations on House Bill 26.

Thank you for the opportunity to testify this morning. I would be happy to answer any questions you may have. Thank you.