

**HOUSE BILL NO. 62  
OHIO HOUSE OF REPRESENTATIVES  
FINANCE COMMITTEE  
TESTIMONY PRESENTED BY  
RYAN HOWARD  
TRUENORTH  
BRECKSVILLE, OHIO**

Good morning, Chairman Oelslager, Vice Chair Scherer, and Ranking Member Cera, and good morning to all members of the House Finance Committee. Thank you for your time this morning.

My name is Ryan Howard. I am the chief operating officer for *truenorth* Energy, 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* Energy employs over 1,100 hard-working and dedicated Ohioans.

*truenorth* 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 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 employ 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 House Bill 62. As an Ohio business engaged in petroleum marketing and as an OPMCA member, *truenorth* feels especially well-situated to comment on House Bill 62. *truenorth* sees and feels the impact of increases in gas prices on its customers and on its sales volumes. Customers are constrained by their financial ability to purchase. Price increases decrease the amount of fuel purchased. We always hear the discontent from motorists as prices rise. Anger against large oil companies can boil over at times, especially when brand name companies announce their profits to Wall Street. The motoring public sometimes feels that fuel pricing takes advantage of them.

A similar sentiment can occur with any tax increase, but especially one that represents a tax increase of nearly 65%. That level of increase is extraordinary by any measure. It is one that will have drivers scratching their heads and seething at the same time. That type of increase will be the subject of conversation for years to come.

On the other hand, we are part of an industry that has a real economic interest in having a well-maintained road system. Good roads are good for business and good for citizens alike. Roads are the primary means by which commercial deliveries are made. Roads are the pathways families take when they drive for pizza or attend Little League games. More business gets done, more fuel is consumed and more family trips happen when the roads are safe and accommodating. Drivers certainly don't enjoy dodging orange barrels, but they definitely need smooth, safe roads.

## OHIO'S FISCAL NEEDS

No government, local or state, runs well on static revenue. The same is true for the Ohio Department of Transportation (ODOT). House Bill 62 proposes an Ohio tax increase of 18 cents per gallon on motor fuel. That is an increase of nearly 65%. *truenorth* is in no position to know whether the need exists for that level of increase. Like you, we have read stories about the purchasing power of gas tax dollars declining over time. We have heard about debt spending that is no longer sustainable. Digging into these issues to establish the actual need is of paramount importance and one of the most important responsibilities of government. The question of when and how much to tax the citizens has always been a crucial question for government. However, if the need is justified, then *truenorth* and OPMCA may be able to support an increase in the gas tax, based on a demonstrated need.

But as this Committee gathers and considers information, we ask that you remember the gas tax was last increased effective July 1, 2005. Thus, when comparing the purchasing power of the current dollar, the difference should be measured back to 2006, the first year following the last increase. It should not be 2003 which is the year used in some estimates.

Also, when considering budget enhancements that have benefited ODOT, we ask that you remember that an additional \$90-\$95 million per year was made available and earmarked strictly for road construction and repairs from the Ohio Petroleum Activity Tax. That additional infusion of dollars began just a few years ago. Up to this point, we haven't read anything about the favorable impact of that additional annual revenue in the public expressions of need. This should be explored.

Increasing the Ohio motor fuel tax would produce an overall tax rate that is higher than virtually all other states. The idea that a relatively low tax is bad just because it is lower than surrounding states is odd. That is an advantage not a reason for concern. Ohio should be careful to protect that advantage

when possible. Raising taxes in Ohio by 18 cents a gallon will have serious effects on those businesses near our borders especially on the Michigan, Indiana and Kentucky sides of the state. Consumers are more price sensitive to fuel than any other product. National consumer research consistently shows that approximately two-thirds of all fuel consumers would drive five minutes out of their way to save three cents per gallon. Right now, consumer price sensitivity drives substantial business into Ohio. This would reverse that trend and we would lose overall gallons in those locations. This should be factored into the decision making process. Our observations are that an 18 cent per gallon swing could be devastating to border businesses. This is another aspect of evaluating need and we ask you to consider and explore further that impact.

Gathering accurate and comprehensive information is crucial to developing a realistic picture of need. There are other areas of interest that may merit further discussion but which are beyond the time constraints imposed on public testimony. We would be happy to follow up with the Committee members to discuss those issues.

#### **MOTOR FUEL DEALER ALLOWANCE**

In its current form, *truenorth* and OPMCA oppose House Bill 62. Although we remain concerned about an accurate demonstration of need, the principal reason for our opposition is the failure to restore the dealer allowance for collecting and remitting the motor vehicle fuel tax. *truenorth* and OPMCA are disheartened and discouraged by that decision, especially in view of the 65% tax increase proposed.

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.

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, 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 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.

#### **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 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 higher. It is the preferred method and we see no change in the future except heavier reliance.

Credit card companies charge retailers a processing fee of approximately 2.5% of the gross transaction amount. Accordingly, if 46¢ in Ohio tax per gallon is passed into law, the retailer will pay 1.15¢ in fee 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 \$11,500. 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 \$27,000 per store (assuming credit card payment on 80% of the fuel) and I note that we operate over 100 retail stations in Ohio.

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.

#### **ALTERNATIVE FUELED VEHICLES**

OPMCA also believes that House Bill 62 can be improved now by addressing the inequity inherent in allowing alternative fueled vehicles to escape road taxation. These vehicles certainly wear the roads through use and there should be some way to bring better financial parity among users of the road. Some form of registration fee would be best and it should be implemented soon so that it becomes part of the decision making process before the level of the tax revenue at stake makes the issue more of a political hot potato.

#### **TAX RATE INDEXING**

OPMCA also will oppose attempts to index the gas tax to costs. Such a measure might create a tax that produces revenue that increases as costs increase. But, costs are not necessarily needs. The General Assembly should weigh demonstrated need as it arises. Other priorities might surface in the interim. Indeed, other events could occur. For example, the infusion of nearly \$100 million of petroleum activity



tax revenue. If the gas tax was indexed to cost, there would be no accounting for the extra petroleum activity tax revenue. The gas tax would just increase. The voice of future voters may be weakened as reliance on an index to raise taxes grows. OPMCA believes indexing presents these practical and philosophical problems that are better avoided.

## **CONCLUSION**

To reiterate, OPMCA opposes House Bill 62 in its present form. We request this committee to (1) restore the collection and shrinkage allowance; (2) reaffirm inquiry into the state's needs for the level of tax increase proposed; (3) impose tax on alternative fueled vehicles; and (4) avoid the traps of tax indexing.

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