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MATTHEW DUNLAP
SECRETARY OF STATE

STATE OF MAINE
OFFICE
OF THE
SECRETARY OF STATE

February 15, 2007

The Honorable Philip L. Bartlett II, Chair
The Honorable Lawrence Bliss, Chair
Joint Standing Committee on Utilities & Energy
Room 211A, Cross Office Building
100 State House Station
Augusta, Maine 04333-0100

RE: Report of the Biodiesel Study Group required by PL 2006, Chapter 677

Dear Senator Bartlett and Representative Bliss:

On behalf of the Biodiesel Study Group, I am pleased to submit the group's report as required by Chapter 677 of the Public Laws of 2006.

The study group was charged with reviewing the biodiesel fuel tax reduction enacted by public law 677, and formulating recommendations. The group met twice to review available data regarding the use of biodiesel and also exchanged numerous phone calls and e-mails. The group also was charged with preparing draft legislation necessary to implement the group's recommendations. The draft legislation is included in the report.

Thank you for your consideration. I and my staff would be pleased to answer any questions the committee may have regarding this report.

Sincerely,


Matthew Dunlap
Secretary of State

cc: Committee on Utilities and Energy

Enclosures



MATTHEW DUNLAP
SECRETARY OF STATE

STATE OF MAINE
OFFICE
OF THE
SECRETARY OF STATE

February 15, 2007

The Honorable Dennis S. Damon, Chair
The Honorable Boyd P. Marley, Chair
Joint Standing Committee on Transportation
Room 126, State House
100 State House Station
Augusta, Maine 04333-0100

RE: Report of the Biodiesel Study Group required by PL 2006, Chapter 677

Dear Senator Damon and Representative Marley:

On behalf of the Biodiesel Study Group, I am pleased to submit the group's report as required by Chapter 677 of the Public Laws of 2006.

The study group was charged with reviewing the biodiesel fuel tax reduction enacted by public law 677, and formulating recommendations. The group met twice to review available data regarding the use of biodiesel and also exchanged numerous phone calls and e-mails. The group also was charged with preparing draft legislation necessary to implement the group's recommendations. The draft legislation is included in the report.

Thank you for your consideration. I and my staff would be pleased to answer any questions the committee may have regarding this report.

Sincerely,


Matthew Dunlap
Secretary of State

cc: Committee on Transportation

Enclosures

Biodiesel Study Group
for the
Joint Standing Committee on Transportation
Joint Standing Committee on Utilities and Energy
(Required by Public Law 2006, Chapter 677)

January 2007

Introduction: Chapter 677, “An Act to Enhance Maine’s Energy Independence and Security” enacted a lower fuel tax rate on diesel fuel blended with at least 2% bio fuel. The tax rate on “biodiesel” was established at 20 cents per gallon. The tax rate on regular diesel currently is 27.9 cents per gallon.

The intent of Chapter 677 was to encourage the use of biodiesel fuel. The use of biodiesel reduces the use of petroleum based diesel and has potential benefits for the environment.

Chapter 677 appropriated \$20,000 from the General Fund to replace the tax revenue loss to the Highway Fund.

The reduced biodiesel tax rate is scheduled to sunset ninety (90) days after the adjournment of the first regular session of the 123rd Legislature.

Chapter 677 also required the Secretary of State to convene a study group consisting of representatives from the Bureau of Motor Vehicles, the Office of Energy Independence and Security, the Department of Transportation, and Maine Revenue Services.

The group met twice to review information and to formulate recommendations. Appendix A contains the authorizing legislation. The group’s membership is included in Appendix B.

The group is charged with looking at the revenue impact of the differential tax on biodiesel; the impacts on administration and compliance; and alternatives to a differential tax including a refund process.

Synopsis: The purpose of a reduced motor fuel tax on biodiesel is to reduce the overall cost of the fuel in order to encourage usage. The intent of the legislation was to encourage suppliers and retailers to install the infrastructure necessary to support the sale of biodiesel fuel in order to further the State’s goals of reducing the dependence on petroleum and reducing pollution.

Taxing biodiesel at a rate different from regular diesel poses particular problems for State tax administrators and for the public. Biodiesel and regular diesel essentially are interchangeable fuels. Once the fuel is placed in the tank of the motor vehicle it is impossible to distinguish between the two fuels. This is a particular problem for interstate trucking companies operating under the base state fuel tax agreement, the International Fuel Tax Agreement (IFTA).

Biodiesel Usage: Currently the use of biodiesel as a motor fuel in Maine is thought to be minimal. The Office of Energy Independence and Security reports that only two commercial filling stations are known to sell biodiesel at this time. Most biofuel sold in Maine is currently used in heating in stationary engines. However, this could change as biodiesel becomes more readily available. At least one large motor carrier is planning to run their local fleet on biodiesel. At least one New Hampshire interstate carrier is known to operate vehicles fueled by biodiesel into Maine. One supplier of biodiesel currently is working with a number of motor carriers to explore the possibility of switching their vehicles to biodiesel.

In September of 2006, after the tax reduction went into effect, the two stations selling biodiesel commercially are selling the fuel for essentially the same price as regular diesel.

Recommendations:

1. The biodiesel differential tax should continue to be sunsetted and reviewed by the Legislature every two years. The study group believes that need for the differential may soon become obsolete as the infrastructure for biodiesel becomes more widely available. Should the differential continue, it should be indexed for inflation in the same manner as diesel fuel.
2. Any revenue loss from the Highway Fund should be reimbursed from the General Fund. The reimbursement should be prospective based on the expected tax loss for the next biennium. Adjustments should be made for the previous biennium. (The Office of Energy Independence and Security abstained from this recommendation, and from the fiscal note on the draft legislation.)
3. Retail pumps dispensing biodiesel should be clearly labeled. Fuel receipts should include the fuel type or tax rate.
4. Biodiesel should be clearly defined for tax purposes.
5. The Legislature's Taxation and Transportation Committees should have joint oversight over the tax rate on biodiesel.
6. The biodiesel usage should be carefully tracked and documented. Maine Revenue Services is the agency responsible for tracking biodiesel usage for tax purposes. Maine Revenue Services has revised its forms to track biodiesel usage.
7. Biodiesel purchased out of state, but used in Maine in an IFTA qualified motor vehicle should be entitled to a refund of the tax differential conversely, biodiesel purchased in Maine and used out of state in an IFTA qualified motor vehicle must pay back the difference in tax. Maine Revenue Services and the Bureau of Motor Vehicles have developed the forms and procedures to accomplish this.

Discussion: The use of fuel derived from biological materials offers potential benefits to society including reducing dependence on petroleum and possible reductions in pollution. Currently, supplies of biofuels are unreliable and may be more expensive than petroleum based fuel. In addition, biodiesel may require significant infrastructure in order to deliver it to the consumer. Many states and provinces are attempting to encourage the usage of biofuels through the reduction in the motor fuel tax rate. The United States Federal Government also provides tax incentives for biofuels.

In 2006, the Maine Legislature authorized a temporary reduction in Maine's motor fuel tax for biodiesel. The reduction was authorized in LD2041 (now PL c.677) "An Act to Enhance Maine's Energy Independence and Security". Chapter 677 provided for an 7.9 cent per gallon reduction in the motor fuel tax on diesel containing at least 2 percent of fuel derived from biological materials. Chapter 677 also provided for a \$20,000 General Fund appropriation to reimburse the Highway Fund for the expected loss in tax revenue. The bill provides for a sunset of the tax reduction in late 2007; and directs the Secretary of State in conjunction with Maine Revenue Services, the Department of Transportation, and the Office of Energy Independence and Security, to conduct a study and to make recommendations relative to the tax reduction.

The study group was charged with considering the revenue impact of a differential tax on biodiesel; the impact on administration and compliance; and alternatives to the differential tax including the refund process. The group met twice to consider these issues.

Financial Impacts: The financial impacts for differential tax on biodiesel are difficult to predict. It was generally agreed that usage will increase substantially as biodiesel becomes more readily available and more readily acceptable to the public. As of November 2006, only two retail stations are known to sell biodiesel. However, several operators of fleets of motor vehicles were reported to be considering using biodiesel. For example, one Portland-based carrier was reported to switching its fleet of 130 retail delivery trucks to biodiesel. Switching this one fleet to biodiesel could result in the tax loss of approximately \$50,000 per year.¹

Maine Revenue Services is prepared to track the sale of biodiesel sold in Maine based on distributor tax reports. In order to be eligible for the tax differential, the biodiesel must be reported separately.

Maine has indexed its motor fuel tax to adjust for changes in highway-related costs. Should the biodiesel differential continue, it also should be indexed to maintain the same relative rate to diesel fuel.

¹ Assumes a fleet of 130 trucks averaging 50,000 miles per year, and 10 MPG.

Administration: A differential tax on biodiesel poses a number of problems for tax administrators and potentially for the public. Biodiesel and regular diesel are interchangeable fuels. This poses a problem for the interstate motor carrier reporting under the International Fuel Tax Agreement (IFTA). IFTA is a based jurisdiction fuel tax agreement. All 48 continental states and the 10 Canadian provinces belong to IFTA. In IFTA, the motor carrier makes a single quarterly fuel tax report to their base jurisdiction. The carrier reports all fuel purchased in every jurisdiction and all distance traveled in every jurisdiction. The taxes paid at the pump are applied to the taxpayer's liability in other states and provinces. If, for example, a motor carrier buys fuel in Maine, but travels part of the time in New Hampshire, fuel taxes initially paid in Maine are applied to the carrier's New Hampshire tax liability. The carrier either pays or is refunded the difference in taxes. The base state sends the appropriate taxes to the other IFTA member jurisdictions.

IFTA fuel tax reporting is by fuel type. Since regular diesel and biodiesel are interchangeable fuels, the two fuels are combined on the IFTA report. The Bureau of Motor Vehicles and Maine Revenue Services have agreed that all diesel type fuel will be treated as diesel for IFTA purposes. The tax paying motor carrier will receive tax paid credit for regular diesel (currently 27.9 cents per gallon). To the extent that the IFTA taxpayer uses biodiesel they will receive a 7.9 cent per gallon credit, more than they paid in fuel taxes. To the extent that the carrier using biodiesel travels out of state, Maine will transmit tax revenues to the other IFTA states and provinces that Maine did not collect from a tax payer.

To offset part of this loss, Maine Revenue Services and the Bureau of Motor Vehicles developed a supplemental tax return so the carriers may report their biodiesel usage and pay the tax due on out of state travel. Instructions have been included on the quarterly IFTA tax return and have been posted to the Bureau of Motor Vehicle's website.

Conversely, IFTA truckers purchasing biodiesel out of state, using it in Maine, are entitled to a refund. In this case, Maine initially receives its regular tax from the carrier's base jurisdiction. Maine Revenue Services has developed a procedure for a refund process. At least one New Hampshire-based IFTA carrier has reported using biodiesel in their operations which includes a regular daily run to Portland. Determining the validity of the refund request becomes problematic when the carrier travels into multiple jurisdictions and purchases fuel from multiple locations, and uses a mix of regular and biodiesel.

To reduce this problem, the study group recommends that our biodiesel be properly labeled, and that the fuel receipt include either the tax rate or the fuel type. Clear labeling also would provide a degree of public protection for those who may not wish to use biodiesel fuel in their vehicles.

The biodiesel differential tax creates a situation where the carrier easily could misrepresent their tax due, either intentionally or unintentionally. Any IFTA taxpayer purchasing biodiesel, and reporting the fuel as regular diesel, would receive a 7.9 cent per gallon credit more than they paid in taxes. The only way to discover the improper collection of the tax is through the IFTA audit process. Under the terms of the IFTA agreement, an IFTA jurisdiction is required to audit only 3 percent of their motor carriers every year.

Alternatives to a biodiesel tax differential: The study group discussed alternatives to biodiesel differentials. The group discussed, in particular, charging the full diesel tax at the pump and then offering a refund to the taxpayer. This has the advantage of assuring that the tax subsidy goes directly to the consumer. However, a refund program would require the taxpayer to keep documentation and to submit periodic refund requests. Maine Revenue Services would then have to process the request and issue refunds. Presumably, there would also be an audit process. The administrative burden on the public could be mitigated somewhat that the refund process will be included in the State income tax form.

The group also discussed the possibility of providing direct subsidies to biodiesel suppliers. Based on information from the Office of Energy Independence and Security, their intent of the legislations was to incent consumers. Direct subsidies to suppliers probably would not accomplish this objective. It should be noted that a tax reduction subsidy also does not necessarily benefit consumers.

Conclusion: The use in Maine of biodiesel fuel is likely to grow significantly regardless of any fuel tax reduction. The biodiesel tax reduction should be reviewed periodically, and should continue only so long as is useful and necessary to encourage biodiesel infrastructure development. Any and all tax loss to the Highway Fund should be reimbursed from the General Fund. There should be proper documentation and labeling of biodiesel fuel.

Appendix A

CHAPTER 677

H.P. 1439 - L.D. 2041

An Act To Enhance Maine's Energy Independence and Security

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 36 MRSA §3203, sub-§1-A is enacted to read:

1-A. Special biodiesel rate. Notwithstanding subsection 1, the rate for distillates containing 2% or more of biodiesel fuel by volume is 20¢ per gallon. This subsection is repealed 90 days after the adjournment of the First Regular Session of the 123rd Legislature.

Sec. A-2. Study group. The Department of the Secretary of State, Bureau of Motor Vehicles shall convene a study group consisting of the Bureau of Motor Vehicles; Office of Energy Independence and Security; the Department of Transportation; and the Department of Administrative and Financial Services, Bureau of Revenue Services. The study group shall consider the revenue impacts of a differential tax on biodiesel, the impacts on tax administration and compliance and alternatives to a differential tax including a refund process.

By March 15, 2007, the Department of the Secretary of State, Bureau of Motor Vehicles shall report the findings and recommendations of the study group, including any necessary implementing legislation, to the joint standing committee of the

Legislature having jurisdiction over utilities matters and the joint standing committee of the Legislature having jurisdiction over transportation matters. Either the joint standing committee of the Legislature having jurisdiction over utilities matters or the joint standing committee of the Legislature having jurisdiction over transportation matters, after consultation between the committees, may report out legislation on the subject matter of the report to the First Regular Session of the 123rd Legislature.

Sec. A-3. Transfer from General Fund to Highway Fund. The State Controller shall transfer \$20,000 from the General Fund unappropriated surplus to the Highway Fund unappropriated surplus no later than June 30, 2007.

Appendix B

Biodiesel Study Group

Garry Hinkley, Chair.
Acting Dir., Vehicle Services Division
Bureau of Motor Vehicles

Peter B. Beaulieu
Dir, Tax Division
Maine Revenue Services

Sara Lewis
Asst. Dir., Tax Division
Maine Revenue Services

Theresa Savoy
Policy Development Specialist
Maine Department of Transportation

Uldis Vanags
Energy Policy Analyst
Office of Energy Independence & Security

Staff.

Francis Fox, Acting Chief, Office of Motor Carrier Services, BMV
Debra Stuart, IRP/IFTA Supervisor, Office of Motor Carrier Services, BMV
Clarissa Hurley, Division of Vehicle Services, BMV

Appendix C – draft legislation

"An Act Relating to Taxation of Biodiesel"

1-A. **Special biodiesel rate.** Notwithstanding subsection 1, the rate for distillates containing 2% or more of biodiesel fuel by volume is 20¢ per gallon. ~~This subsection is repealed 90 days after the adjournment of the First Regular Session of the 123rd Legislature.~~

Distillates that are sold at retail and contain 2% or more of biodiesel fuel by volume must be labeled as "biodiesel", and must include the percentage of biofuel by volume, in order to qualify for the tax rate provided by this subsection. Any receipt for the retail or wholesale sale of such distillates must either indicate that the fuel is biodiesel, or include the applicable tax rate in cents per gallon, or both.

This subsection is repealed September 30, 2009.

Transfer from General Fund to Highway Fund. The State Controller shall transfer ~~\$20,000~~ \$250,000 from the General Fund unappropriated surplus to the Highway Fund unappropriated surplus no later than June 30, ~~2007~~ 2009.

Report to the Joint Standing Committee on Taxation and the Joint Standing Committee on Transportation.

The State Tax Assessor shall report to the Joint Standing Committee on Taxation and the Joint Standing Committee on Transportation the amount of revenue loss for the previous biennium to the Highway Fund as a result of 36 MRSA section 3203 (1A). The report is due by March 15 of the first session of each Legislature.

Summary

This legislation reflects the recommendations for the Biodiesel Study Group authorized by Chapter 677, PL 2006. The bill extends the biodiesel tax reduction until September 30th, 2009. It also requires that fuel sold as biodiesel be labeled, and that any receipts indicate the fuel type or tax rate. The bill authorizes the transfer of \$250,000 from the General Fund to the Highway Fund. This is the estimated amount of tax loss due to the subsidy for the upcoming biennium and the previous biennium. The bill requires the State Tax Assessor to make a report to the Taxation and Transportation committees by March 15th of the first session of each legislature.

Appendix D

Oakhurst milk trucks converting to biodiesel

November 28, 2006

PORTLAND, Maine --Portland-based Oakhurst Dairy plans to begin using a biodiesel blend in 130 delivery trucks by year's end, creating the largest private biodiesel fleet in New England, company officials announced Tuesday.

The decision is good for the environment because biodiesel is a cleaner-burning fuel and because it's produced from waste vegetable oil, among other things, said Maine Gov. John Baldacci.

"It reduces our need for, and our addiction to, foreign oil," he said.

Oakhurst's decision, which affects 90 percent of its fleet, will remove from the air an estimated 1,332 tons per year of carbon dioxide, a heat-trapping gas that's associated by scientists with global climate change. The reduction is equal to taking 262 cars off the road for a year, Oakhurst officials said.

Except in the coldest weather, the delivery trucks will use a blend that's 20 percent biodiesel and 80 percent petroleum diesel. That ratio reduces air pollution without requiring engine modifications, officials said.

Oakhurst plans to experiment with increasing the biofuel ratio to further cut petroleum use, said Stan Bennett, president of Oakhurst Dairy.

Oakhurst, which is the largest family-owned independent dairy in northern New England, will get its biodiesel from C.N. Brown and Irving. Oakhurst also is buying hybrid cars for its sales staff as part of its energy and carbon reduction plan.

Interest in biodiesel over the past year has been aided by increases in crude oil prices, which has made biodiesel cost competitive. In addition, Bennett credited a provision in Baldacci's energy bill last session that grants an 8-cent-per-gallon reduction in the excise tax for motor fuel that contains at least 2 percent biodiesel with helping Oakhurst make the switch.

Clean Air-Cool Planet, a Portsmouth, N.H.-based nonprofit group that promotes solutions to global warming, has worked with Oakhurst on ways to reduce carbon emissions since 2001.

A high-profile company such as Oakhurst making a big commitment to biodiesel serves as an example to other fleet owners, said Bill Burtis, a group spokesman.

"An increased use of biodiesel and biofuels creates an increased likelihood that our children and grandchildren will enjoy a better, cleaner environment," Baldacci said. "We need to continue looking to the future of energy in Maine." ■

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Appendix E

Maine IFTA Worksheet Supplemental Form - Adjustment for Maine Biodiesel Purchases

Biodiesel purchases made in Maine on or after August 23, 2006 will be taxed at a reduced excise tax rate. Biodiesel is defined as any diesel product containing at least 2% biological content. Straight diesel is taxable at 27.9 cents per gallon. Biodiesel is taxable at 20.0 cents per gallon. Carriers purchasing biodiesel in Maine must complete this supplemental form and return it to the Maine Bureau of Motor Vehicles with the IFTA-101 return.

		Total Gallons Purchased Tax Paid
Regular diesel	1	6,000
Biodiesel gallons	2	4,000
Total Tax Paid	3	10,000
Total ME Taxable Gallons	4	3,000

From ME column K of the IFTA-101 Worksheet
(This amount should equal the amount in Box 3)

If Box 2 is greater than Box 4, Continue to step 5.

If Box 4 is greater than Box 2, STOP HERE. Attach this form to the IFTA-100 return.

Additional gallons purchased at the reduced rate	5	1,000	Subtract Box 4 from Box 2
Additional amount due with IFTA-100 return	6	79.00	Multiply Box 5 by 0.079
Form IFTA-100 Amount (Credit) Due	7	(588.00)	Form IFTA-100, line 11
Net Amount (Credit) Due	8	(509.00)	Add Boxes 6 and 7



**INTERNATIONAL
FUEL TAX
ASSOCIATION, INC.**

Mangos
The International Fuel Tax Agreement

RECEIVED
AUG 19 2005
BY IFTA, INC.

912 W. Chandler Blvd., B-7
Chandler, AZ 85225-4910
480-839-4382 / 480-839-8821 FAX
www.iftach.org

**RESOLUTION OF THE MEMBERS OF
THE INTERNATIONAL FUEL TAX AGREEMENT**

The member jurisdictions of the International Fuel Tax Agreement (hereinafter referred to as "the Agreement") held their regular Annual Business Meeting on July 15 and 16, 2005 in Halifax, Nova Scotia.

The member jurisdictions discussed the issue of "Alternative Fuels - Fuel Types/Exemption".

Discussion:

The member jurisdictions discussed the fact that over the last few years there has been an emergence of alternative fuels that includes blends such as biodiesel. Biodiesel is an alternative fuel made from renewable resources, which can be used alone or blended with other petroleum products for use in diesel powered vehicles - blends of biodiesel/diesel may be used interchangeably in the same vehicle. Biodiesel is acknowledged to have potential environmental benefits and reduces dependence on imported oil. Some jurisdictions have introduced incentives, exemptions, and reduced tax rates to encourage the use of these fuels.

The member jurisdictions agree that, under IFTA, the administration and collection of motor fuel use taxes is based on the principles that licensees are required to keep records and report separately on each fuel type. Member jurisdictions are required to provide the tax rates for each fuel type.

The member jurisdictions are concerned that the use of alternative fuels that can be blended (interchangeable) with other fuel types with different tax rates poses a risk to the basic principles of the administration and collection of motor fuel use taxes under IFTA. This could result in tax evasion problems. If jurisdictions tax blends of biodiesel at different rates for IFTA purposes, licensees will be unable to correctly report on interchangeable fuel types, and it will create difficulties to audit the fuel and distance records reported to the base jurisdiction. Further, jurisdictions often have "special" requirements for any tax exemptions, making the tax exemptions even more difficult to administer.

The Agreement provides for jurisdictions to maintain their authority to exempt fuel use. However, exempt fuel use must be reported to the base jurisdiction under IFTA and a licensee is required to submit claims for refunds directly to the respective jurisdiction.

BE IT RESOLVED, that the member jurisdictions believe that differing tax rates for blended/interchangeable fuels is not consistent with a uniform motor carrier fuel tax program.

BE IT RESOLVED, that the member jurisdictions agree that fuel types that may be blended or used interchangeably in a qualified motor vehicle should be reported as one fuel type/tax rate, in order to maintain the basic principles of the administration and collection of motor fuel use taxes under IFTA.

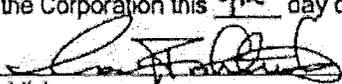
BE IT RESOLVED, that any member jurisdiction undertaking to encourage the use of alternative fuels should utilize the exempt fuel use provisions set out in R830.

IT IS FURTHER RESOLVED that the President of the International Fuel Tax Association, Inc. shall see that this Resolution is appropriately filed with the Arizona Corporation Commission; and all other acts necessary to effectuate the resolution are completed; and that the President shall provide all necessary certification of this act of the member jurisdictions.

CERTIFICATION

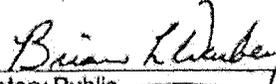
I hereby certify that I am the duly elected, qualified and acting President of International Fuel Tax Association, Inc., a duly organized and existing Arizona corporation; that I am empowered to make this certification by the Board of Trustees; that the foregoing is a true and correct copy of resolutions adopted at a regular Annual Business meeting of the member jurisdictions duly called on July 15, 2005; that the same has been duly recorded in the minutes of the Corporation and has not been amended, modified, rescinded or revoked.

IN WITNESS WHEREOF, I affix my name as President of the Corporation this 9th day of August, 2005.

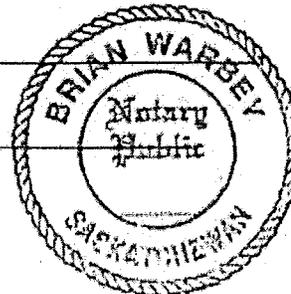


Gary Frohlick
President

Subscribed and sworn to before me on August 9, 2005



Notary Public



My Commission Expires:

Feb. 28, 2010